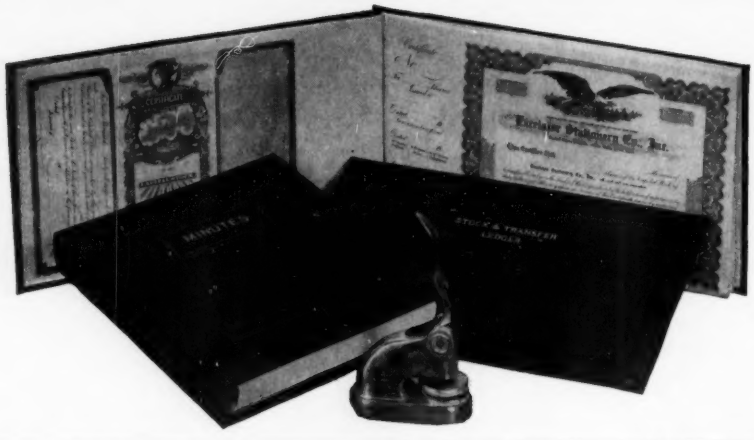
American Bar Association Journal

OCTOBER 1957 • *Volume 43* • *Number 10*

A Chronicle of the London Meeting:

COMPLETE CORPORATE OUTFITS

Outfit No. 21
$15.00
Illustrated



SEND FOR
COMPLETE
CATALOG

OUTFIT No. 21
Black Set

$15.00

3 Ring Minute Book,
50 Blank Sheets
Book of 25 Litho Certificates
Name and Capitalization Printed
Stock & Transfer Ledger,
Corporate Desk Seal
Durable Cardboard Box

No. 22 Same Set with Printed Minutes and By Laws..... **$16.00**

OUTFIT NO. 1
Black and Red Set

$16.00

3 Ring Minute Book,
50 Blank Sheets
Book of 25 Litho Certificates
Name and Capitalization Printed
Stock & Transfer Ledger,
Corporate Desk Seal
Durable Cardboard Box

No. 2 Same Set with Printed Minutes and By Laws..... **$17.00**

OUTFIT No. 3
Black and Red Set
Better Quality

$19.00

3 Ring, Metal-Hinged Minute Book, 100 Blank Sheets
Book of 25 Litho Certificates
Name and Capitalization Printed
Stock & Transfer Ledger,
Corporate Desk Seal
Durable Cardboard Box

No. 4b Same Set with Printed Minutes and By Laws..... **$20.00**

OUTFIT No. 5
Black and Red Set
"Excelsior"

$21.00

Heavy Rod Style Minute Book, 100 Blank Sheets
Book of 25 Litho Certificates
Name and Capitalization Printed
Stock & Transfer Ledger,
Corporate Desk Seal
Durable Cardboard Box

No. 6 Same Set with Printed Minutes and By Laws..... **$23.00**

OPTIONAL EXTRAS—

Gold Letter name on all 3 books	extra	$1.00
Pocket Seal instead of Desk Seal	extra	1.25
Steel File, Pull-Drawer Style B or Hinged Lid Style A instead of Cardboard	extra	5.75
Brown Cloth Drawer File instead of Cardboard	extra	2.00

Additional Certificates—7 cents each.

BONDS

50 Bonds—$40.00 and up.

Consult us—we can aid you with specimens of various types of Debentures—Bonds, etc. Send details for estimate.

BOND REGISTERS

Bond Registers, bound black cloth, red back and corners, A-Z index in front.

100 name register	$ 6.25
200 name register	8.00
300 name register	10.00
500 name register	12.50

POCKET SEAL $7.25

SPECIAL CERTIFICATES

Preference clauses, etc., under 200 words, 1 or 2 classes stock, 50 certificates apportioned amongst classes—Ordered without complete outfit $18.50. With complete outfit, add to price of outfit $12.00. Add $1.50 for each 100 words or fraction over 200. Each additional class $2.00. Addit. certificates 8¢.

WHEN ORDERING

(Postage prepaid if remittance is sent with order)

Print Corporate Name exactly as on Certificate of Incorporation. Give: *State* and *Year* of incorporation; No. of Shares ..... Par Value $..... Capital Stock $..... If stock is without par value specify total amount of Shares..... Is stock Full Paid and Non-assessable?..... Certificates signed by President and .....?

Speed - - - **COMPLETE OUTFITS, SEALS, ETC., RUSHED TO YOU BY MAIL ON SAME BUSINESS DAY ORDER IS RECEIVED**

(Specially Printed Certificates Require More Time)

Excelsior Stationery Co.

43 Park Place, New York 7, N. Y.
BEekman 3-3037

October, 1957

This Month's Cover

Our cover this month depicts the features of John Dickinson (1732-1808), lawyer and statesman. Dickinson finished his studies at Middle Temple in 1757 and began to practice in Philadelphia, rising to eminence at the Bar within five years. With the coming of the Revolution, he abandoned his profession and became one of the leaders of the struggle against the King. A conservative, Dickinson favored non-violence and voted against the Declaration of Independence. He played a prominent part in the Constitutional Convention and was a staunch advocate of the adoption of the new Federal Government. The line sketch is by Charles W. Moser, of Chicago.

THE AMERICAN BAR ASSOCIATION JOURNAL is published monthly by the AMERICAN BAR ASSOCIATION at 1155 East 60th Street, Chicago 37, Illinois.
Entered as second class matter August 25, 1920, at the Post Office at Chicago, Illinois, under the act of August 24, 1912.
Price per copy, 75¢; to Members, 50¢; per year, $5.00; to Members, $2.50; to Students in Law Schools, $3.00; to Members of the American Law Student Association, $1.50.
Vol. 43, No. 10. Changes of address must reach the JOURNAL office five weeks in advance of the next issue date. Be sure to give both old and new addresses.

The President's Page

Charles S. Rhyne

Our Association exists solely to serve our profession and the public. Letters received in response to my request for comments evaluating the Association's present performance demonstrate that there is a widespread feeling among our members that the American Bar Association does not serve the interests of the so-called "grass roots" lawyers of the nation. Analysis of these comments reveals that this criticism is directed chiefly to what is regarded as insufficient aid on the economics of law practice.

A major effort to dispel this feeling and to eliminate this criticism is being undertaken this year. We are determined that our Association will meet and serve the needs of all lawyers, whether they are located in small towns, large cities or county seats.

To help achieve this objective the new Board of Governors at its first meeting in London created a Committee on Law Practice Economics. A member of the Board itself, John C. Satterfield, of Jackson, Mississippi, has been designated as Chairman. This Committee will study and report upon what the American Bar Association has been doing and what needs to be done in this all-important field of service.

In creating the new Committee the Board was well aware that many Sections and Committees of the Association and many state and local bar associations are doing outstanding work on law office management and on other "bread and butter" aspects of law practice. The new Committee will not duplicate this work but it will focus attention upon it. A real service can be performed by compiling check lists of articles, studies and reports, and by reprinting materials previously prepared which are now hard to secure.

The Committee will also look into the possibility of publicizing to all members the transcripts of some of the tremendously helpful institutes, or workshops, which are conducted at Annual and Regional Meetings. These have a most restricted audience now, since an average of only 4000 lawyers attend Annual Meetings and about 1000 each regional meeting.

The new Committee will also make recommendations for new services. One idea already advanced for exploration is whether the marvels of the electronic industry can be harnessed in the field of legal research. In many fields of endeavor, man-hours per unit of work are being steadily reduced through automation, and that is a major factor in increased income. Lawyers still spend endless hours in research because there has been no basic innovation in legal research methods in the past fifty years. With full recognition that there can be no substitute for the judgment of the lawyer in choosing the theories and cases upon which he will rely, and in arranging and presenting them, is it not possible to improve on the methodology of indexing legal materials so as to speed up the finding of usable legal authorities? Everyone recalls the UNIVAC machine which performed wonders during the reporting of election returns. Recently we have been told also about an electronic indexing of the Bible. Whether court decisions can be fed into a machine and cases in point disgorged when a few buttons are pushed is indeed a fascinating thought. How close such a system of indexing is to reality is at least worth consideration in any study of law practice economics. Regardless of how achieved, any reduction of time spent in research will increase a lawyer's productivity and his income.

The Association's most valuable contribution to the "grass roots" lawyer—and to all lawyers everywhere—is its unrelenting campaign of public service. No organization in the United States does more unselfish public service or works in more fields of endeavor than the American Bar Association. We want the lawyers in our country and the public to become more aware of the program and the activities of the American Bar Association. The American Bar Association is not something removed and aloof, but an active and vigorous professional organization reaching into all parts of the nation, which is ready, willing and able to render valuable and helpful assistance to the individual lawyer in the everyday problems of his office, in addition to speaking for him and looking after the interests of his profession at the national level. So vast is its work that only a few members of the Association have a detailed conception, or any real appreciation, of what the Association has done, is doing and plans to do. If more lawyers are to be persuaded to participate in the American Bar As-

(Continued on page 923)

Views of Our Readers

• Members of our Association are invited to submit short communications expressing their opinions, or giving information, as to any matter appearing in the Journal or otherwise, within the province of our Association. Statements which do not exceed 300 words will be most suitable. The Board of Editors reserves to itself the right to select the communications or excerpts therefrom which it will publish and to reject others. The Board is not responsible for matters stated or views expressed in any communication.

The Lesson of Our English Pilgrimage

It was approaching eleven o'clock the morning of Tuesday, July 30, 1957. The multiple, and necessary, resolutions of appreciation to our hosts had been spread upon the record. The repetitive phrases of "liberty under law" and the like were drumming in our ears. The formal pleasantries of social intercourse were being exchanged, of record, by prominent persons. The last meeting of the House of Delegates and the Assembly in concert was only minutes away.

The novel and inspiring "personal pledge" of our new President, Charles Rhyne, just then was ringing in our ears. In his audience in the House were many "grass roots" American lawyers. It was they and others like them who must spread the gospel of the "pledge" and give it individual and local vitality. Then was the time to voice—as good press, the average American lawyer's distilled evaluation of the essence of the London meeting. But no one rose to do so. I would like to do this now.

The last resolution was addressed to "the people of Britain". But it was not accented by anyone in living and graphic terms. As instance, someone might have stressed how not one of the many porters in the Savoy and other London hotels got to bed until 4:00 A.M. the night of the arrival of the *Queen Mary*. They put us to bed and cheerfully served breakfast to the regular guests at eight! Theirs was unfailing courtesy throughout our stay. Or shall it be noted, the British sailors or "hard caseys"—as one of the officers on the *Queen Mary* put it—who in giving assistance at sea, 200 miles out of New York to gravely injured American seamen, treated and lifted the American boys as "tenderly and gently as a woman". Nor can we forget the bus drivers and the shy but quite friendly interest and help of the man on the London street. Not forgotten is the Lady Bonar, who engaged us in conversation on coming out of Buckingham Palace after the Garden Party—it was of the simple things, of home and family. Memorable, as of some spiritual import, was the serving maid in an English home, who found a little time to speak of life in "The States", and of our habits and customs being of slight difference. Within earshot was her closing remark: "When you return to America, tell them you met an English cook and I met an American gentleman." The reply: "A lady or gentleman, in the true sense, is of no class or geography. It is kindness and thoughtfulness toward others. It is found in the individual heart and the spontaneous and momentary performances of human beings, whether in Britain or elsewhere."

So it seems to some that it is not the common language, nor the legal documents that truly bind us together. Nor is it the dutiful generality of the rostrum or written resolution of the business sessions soon to repose on dusty shelves. Rather it is the ennobling spirit of fair play and the daily considerateness which abide in the hearts of us, the individuals, the living people, be these in Britain or the United States.

That the members of the American Bar Association 1957 pilgrimage to Britain have given new impetus to this individual and vital spiritual kinship could be of the essence of our meeting and the hope of the world!

R. E. H. JULIEN
San Francisco, California

Social Security: Some Minor Corrections

We have read with great interest John Regan Stark's article on social security which appeared in the April, 1957, issue of the AMERICAN BAR ASSOCIATION JOURNAL. Please convey to Mr. Stark our congratulations for his able treatment of what he rightly calls a complex statute.

There are just a few statements in the text which we would like to bring to your and the author's attention. We do so with the thought that you may feel the need for further clarification.

One is in the section under the sub-head "Eligibility Provisions". Mr. Stark states, "Benefits are reduced pro tanto, for earnings in excess of that figure." We do not feel that this statement correctly interprets the deductions provision in the law, which is explained on page 17 of "Your Social Security" as follows: "In general, you lose your right to 1 month's benefit check for cash $80 (or fraction of $80) of earnings over $1,200 in the year . . . *No matter how much you earn in a year, you can get the monthly payment for any month in which you neither earn wages of more than $80 nor render substantial services in self-employment.*"

Other minor points are (1) The omission of age 62 as the optional retirement age for women (same paragraph). (2) The use of "majority" in describing the shrinkage of family benefit amounts as children become no longer eligible for

(Continued on page 876)

published monthly

American Bar Association Journal

the official organ of the American Bar Association

The objects of the American Bar Association, a voluntary association of lawyers of the United States, are to uphold and defend the Constitution of the United States and maintain representative government; to advance the science of jurisprudence; to promote the administration of justice and the uniformity of legislation and of judicial decisions throughout the nation; to uphold the honor of the profession of law; to apply its knowledge and experience in the field of the law to the promotion of the public good; to encourage cordial intercourse among the members of the American Bar; and to correlate and promote such activities of the Bar organizations in the nation and in the respective states as are within these objects, in the interest of the legal profession and of the public. Through representation of state, territory and local bar associations in the House of Delegates of the Association, as well as large membership from the Bar of each state and territory, the Association endeavors to reflect so far as possible, the objectives of the organized Bar of the United States.

There are seventeen Sections for carrying on the work of the Association, each within the jurisdiction defined by its by-laws, as follows: Administrative Law; Antitrust Law; Bar Activities; Corporation, Banking and Business Law; Criminal Law; Insurance, Negligence and Compensation Law; International and Comparative Law; Judicial Administration; Labor Relations Law; Legal Education and Admissions to the Bar; Mineral and Natural Resources Law; Municipal Law; Patent, Trademark and Copyright Law; Public Utility Law; Real Property, Probate and Trust Law; Taxation; and the Junior Bar Conference. Some issue special publications in their respective fields. Membership in the Junior Bar Conference is limited to members of the Association under the age of 36, who are automatically enrolled therein upon their election to membership in the Association. All members of the Association are eligible for membership in any of the other Sections.

Any person who is a member in good standing of the Bar of any state or territory of the United States, or of any of the territorial groups, or of any federal, state or territorial court of record, is eligible to membership in the Association on endorsement, nomination and election. Applications for membership require the endorsement and nomination by a member of the Association in good standing. All nominations made pursuant to these provisions are reported to the Board of Governors for election. The Board of Governors may make such investigation concerning the qualifications of an applicant as it shall deem necessary. Four negative votes in the Board of Governors prevent an applicant's election.

Dues are $16.00 a year, except that for the first two years after an applicant's admission to the Bar, the dues are $4.00 per year, and for three years thereafter $8.00 per year, each of which includes the subscription price of the JOURNAL. There are no additional dues for membership in the Junior Bar Conference. Dues for the other Sections are as follows: Administrative Law, $5.00; Antitrust Law, $5.00; Bar Activities, $2.00; Corporation, Banking and Business Law, $5.00; Criminal Law, $2.00; Insurance, Negligence and Compensation Law, $5.00; International and Comparative Law, $5.00; Judicial Administration, $3.00; Labor Relations Law, $6.00; Mineral and Natural Resources Law, $5.00; Municipal Law, $3.00; Patent, Trademark and Copyright Law, $5.00; Public Utility Law, $3.00; Real Property, Probate and Trust Law, $5.00; Taxation, $6.00.

Blank forms of proposal for membership may be obtained from the Association offices at 1155 East 60th Street, Chicago 37, Illinois.

American Bar Association

HEADQUARTERS OFFICE:
1155 EAST 60th STREET, CHICAGO 37, ILLINOIS. Telephone: HYde Park 3-0533
WASHINGTON OFFICE:
1025 CONNECTICUT AVENUE, N. W., WASHINGTON 6, D. C.
Telephone: MEtropolitan 8-6124

Officers and Board of Governors 1957-58

President CHARLES S. RHYNE, 839 17th Street, N. W., Washington 6, D. C.
Chairman, House of Delegates JAMES L. SHEPHERD, JR., Esperson Building, Houston, Texas
Secretary JOSEPH D. CALHOUN, 218 West Front Street, Media, Pennsylvania
Treasurer HAROLD H. BREDELL, Consolidated Building, Indianapolis 4, Indiana
Executive Director JOSEPH D. STECHER, 1155 East 60th Street, Chicago 37, Illinois
Assistant Secretary RICHARD H. BOWERMAN, 205 Church Street, Box 1936, New Haven 9, Connecticut

Ex Officio
- The President,
- The Chairman of the House of Delegates,
- The Secretary,
- The Treasurer,
- DAVID F. MAXWELL, Last Retiring President, Packard Building, Philadelphia 2, Pennsylvania
- TAPPAN GREGORY, Editor-in-Chief, *American Bar Association Journal*, 105 South LaSalle Street, Chicago 3, Illinois

First Circuit	WILLOUGHBY A. COLBY, 18 School Street, Concord, New Hampshire	*Sixth Circuit*	GLENN M. COULTER, Ford Building, Detroit 26, Michigan
Second Circuit	WHITNEY NORTH SEYMOUR, 120 Broadway, New York 5, New York	*Seventh Circuit*	GEORGE S. GEFFS, Jackman Building, Janesville, Wisconsin
Third Circuit	VINCENT P. MCDEVITT, 1000 Chestnut Street, Philadelphia 5, Pennsylvania	*Eighth Circuit*	RICHMOND C. COBURN, 411 North Seventh Street, St. Louis 1, Missouri
*Fourth Circuit**	DOUGLAS MCKAY, Barringer Building, Columbia 1, South Carolina	*Ninth Circuit*	JOHN SHAW FIELD, 15 West Second Street, Box 1291, Reno, Nevada
Fifth Circuit	JOHN C. SATTERFIELD, Box 1172, Jackson, Mississippi	*Tenth Circuit*	FRANKLIN RITER, Kearns Building, Salt Lake City 1, Utah

**The District of Columbia Circuit is considered a part of the Fourth Circuit for the purposes of the Board of Governors.*

Board of Editors, American Bar Association Journal, listed on page 916

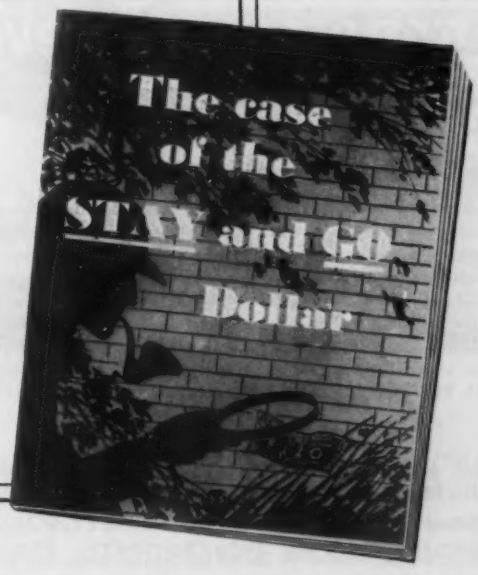
Advisory Board of the Journal

CUTHBERT S. BALDWIN	New Orleans, Louisiana
PHILIP R. BANGS	Grand Forks, North Dakota
STEPHEN W. BOWEN	Tucumcari, New Mexico
GEORGE E. BRAND	Detroit, Michigan
CLAUDE E. CHALFANT	Hutchinson, Kansas
WALTER CHANDLER	Memphis, Tennessee
HOWARD COCKRILL	Little Rock, Arkansas
LELAND M. CUMMINGS	Salt Lake City, Utah
JOSEPH J. DANIELS	Indianapolis, Indiana
DEANE C. DAVIS	Montpelier, Vermont
JOHN A. DIENNER	Chicago, Illinois
JAMES M. DOUGLAS	St. Louis, Missouri
FRANCES CRAIGHEAD DWYER	Atlanta, Georgia
WILLIAM W. EVANS	Paterson, New Jersey
JAMES D. FELLERS	Oklahoma City, Oklahoma
JOHN SHAW FIELD	Reno, Nevada
DONALD A. FINKBEINER	Toledo, Ohio
P. WARREN GREEN	Wilmington, Delaware
FRANK L. HINCKLEY	Providence, Rhode Island
WILLIAM J. JAMESON	Billings, Montana
NICHOLAS JAUREGUY	Portland, Oregon
J. LANCE LAZONBY	Gainesville, Florida
HUBERT S. LIPSCOMB	Jackson, Mississippi
ORISON S. MARDEN	New York, New York
WALTON J. McLEOD, JR.	Walterboro, South Carolina
SHACKELFORD MILLER, JR.	Louisville, Kentucky
MORRIS B. MITCHELL	Minneapolis, Minnesota
EDWARD E. MURANE	Casper, Wyoming
FRANK B. OBER	Baltimore, Maryland
CHARLES W. PETTENGILL	Greenwich, Connecticut
ORIE L. PHILLIPS	Denver, Colorado
JOHN D. RANDALL	Cedar Rapids, Iowa
WARREN H. RESH	Madison, Wisconsin
FREDERICK D. G. RIBBLE	Charlottesville, Virginia
CLEMENT F. ROBINSON	Brunswick, Maine
WILLIAM ALFRED ROSE	Birmingham, Alabama
ASHLEY SELLERS	Washington, D. C.
E. B. SMITH	Boise, Idaho
REGINALD HEBER SMITH	Boston, Massachusetts
THOMAS TODD	Seattle, Washington
ROBERT W. UPTON	Concord, New Hampshire
MAURICE T. VAN HECKE	Chapel Hill, North Carolina
JOHN J. WILSON	Lincoln, Nebraska
CHARLES C. WISE, JR.	Charleston, West Virginia
CHARLES H. WOODS	Tucson, Arizona
MELVIN T. WOODS	Sioux Falls, South Dakota
LOYD WRIGHT	Los Angeles, California

Mr. Employer

let this free booklet help you

Reduce Employee Turnover



All business corporations, partnerships and sole proprietorships face the very real problem of finding new and continuing ways to reduce costly executive turn-over. The Case of the STAY and GO DOLLAR explains how an employer *at no out-of-pocket cost to himself* can give his key employees a very valuable fringe benefit. *And best of all—the STAY and GO DOLLAR plan does not present any tax problems to either the employer or the employee.*

Featuring Acacia Mutual's exciting new policy—"The Executive"—this plan presents a completely new idea in business life insurance. With its revolutionary annual increase in death benefits right up to age 65, "The Executive" offers businessmen the most modern insurance coverage available today.

For your free booklet, write on your firm letterhead to:

Mr. Junior Executive:

Do a *favor* for yourself and your employer—get a copy of this valuable free booklet for him today!

ACACIA MUTUAL
LIFE INSURANCE COMPANY

home office:
51 Louisiana Avenue, N. W.
Washington 1, D. C.

(Continued from page 868)

benefit payments. The term "majority" is often taken as meaning a specific age depending on the particular jurisdiction (in most instances 21); under the social security law, age 18 is set as the time when children's benefits are ended.

Again, we wish to express our appreciation for the publication of this article which we feel will go far to acquaint your readers with salient points in the social security law.

ROY L. SWIFT

Social Security Administration
Washington, D. C.

He Was Glad To Learn About the Butler Amendment

I want to thank the JOURNAL for Mr. Schmidhauser's article on the Butler Amendment. I found his analysis both instructive and interesting. Moreover, I have to admit that I had heard almost nothing about the Butler Amendment before seeing Mr. Schmidhauser's article. I think the JOURNAL has done the profession a service in the publication of this article.

JOHN F. SCHMIDT

Peoria, Illinois

It's Elementary, My Dear Mr. Chief Justice

Readers of your letters column may enjoy an anecdote that Mortimer Levitan, our vastly esteemed Assistant Attorney General of Wisconsin, might well have recalled for his delightful article on "Professional Trade Secrets" in your July issue. It is apropos of his Illusion No. 3, that "judges know more law than anybody else", and of his subsequent comment on the hazard of making briefs too brief, "assuming that the courts know the obvious".

A young lawyer years ago was making his first argument to the Wisconsin Supreme Court. He was for the appellant, having lost in the trial court. Earnestly he developed one point after another, and he polished off each one by saying: "And that, if it please the court, is elementary law."

Eventually wearying of this routine, the chief justice leaned forward and interrupted: "Young man, you may safely assume that it is not necessary to instruct this court in elementary law." This intended crusher did not even abash the youngster. Instantly he retorted:

"Your honor, that was precisely the mistake I made in the lower court."

PERRY C. HILL

Milwaukee, Wisconsin

Errors of Omission, Commission

I noted an error of omission and commission in the AMERICAN BAR ASSOCIATION JOURNAL issue of July, 1957, as regards the news information concerning the activities of the New Jersey State Bar Association printed at page 663. The error was:

1. The New Jersey State Bar Association did not adopt the junior

(Continued on page 878)

(Continued from page 876)

section report recommending the establishment of a public defender office but instead postponed consideration and action on the report until the mid-year meeting of November 22 and 23, 1957.

2. Likewise postponed for consideration at the mid-year meeting was a resolution of the Union County Bar providing for a retention of the assigned counsel system but with the provision of payment of fees to assigned counsel for services rendered other than at arraignment for sentencing.

3. The committee of the junior section who prepared the report under the chairmanship of Stephen J. Foley were commended by the State Bar Association for their industry and comprehensiveness of their report.

The report of the junior section and the recommendation of the Union County Bar are contained in the *New Jersey Law Journal* of May 16, 1957, 80 N.J.L.J. index, page 237.

I trust that you will correct the impression created by the article on the status of the public defender system in New Jersey.

M. Gene Haeberle
Camden, New Jersey

In Praise of the Notre Dame Plan

I have read with much interest the article by Dean Joseph O'Mara of the Notre Dame Law School entitled "The Notre Dame Program: Training Skilled Craftsmen and Leaders" in the July, 1957, American Bar Association Journal.

The course of training and attitude of the Notre Dame Law School as he enumerated it therein, is a faithful reproduction of the training that I received with the first class of law students who followed his program for three years of law school.

Although I have been graduated from the Notre Dame Law School only one year, the program that Dean O'Mara has initiated has made my practice as a member of a three-man law firm much easier and more profitable than it would have been if I had not taken the courses without electives that he prescribes. The program with its difficult courses does not let a student run away from problems which he will eventually meet in practice, for Dean O'Mara's philosophy in such a program is that he, as a practicing lawyer, knew what a new lawyer needs when he comes out of law school, since his position at Notre Dame as Dean is his first full time academic position.

My class's record in bar examinations all over the country has also proved that his theory is correct, and all of us in our class are extremely thankful now for the rigid programming and "worked to death" policy he inaugurated.

James M. Corcoran, Jr.
Evanston, Illinois

Marshall and the Doctrine of Judicial Review

Attorney General Brownell in his article on the Supreme Court (July, 1957) makes the statement that Chief Justice Marshall had no authority by way of precedents in this country when he established the doctrine of judicial review in *Marbury* v. *Madison*.

I respectfully refer the Attorney General to my own article in the May, 1951, issue of the Journal (37 A.B.A.J. 348), in which I pointed out how William and Mary's first law professor—George Wythe—influenced and shaped the mind of his young student—John Marshall.

I cited in the article Chancellor (and Professor) Wythe's decision in 1782 in the case of *Commonwealth* v. *Caton*, 4 Call. (Va.) 5, in which Wythe laid down the doctrine of judicial review, sitting in the Virginia High Court of Chancery.

It was from the great mind of George Wythe—who had also been Thomas Jefferson's mentor—that Marshall derived his doctrine of judicial review.

As late as 1921 the remains of George Wythe's body lay in an unmarked grave in Richmond. In 1922 his grave in old St. John's Churchyard was appropriately marked with a tablet.

On September 25, 1954, the College of William and Mary held its Marshall-Wythe-Blackstone Commemoration Ceremonies, in celebration of the John Marshall Bicentennial Year and the 175th anniversary of the First Chair of Law in the United States. Chief Justice Warren was the principal speaker, and unveiled a bust of Marshall. Dr. Ar-

(Continued on page 880)

(Continued from page 878)

thur L. Goodhart, American-born Master of University College, Oxford University, delivered a memorable speech (in Latin) on Wythe, and unveiled a bust of Wythe. The Lord Chief Justice of England, Lord Goddard, spoke about Wythe's predecessor in England, Sir William Blackstone, and unveiled a bust of Blackstone. On this occasion also, the name of William and Mary's department of jurisprudence was officially changed to the Marshall-Wythe School of Law. Chief Justice Warren and Lord Chief Justice Goddard were both awarded LL.D. degrees at the conclusion of the exercises. Chancellor Wythe had been honored by William and Mary in the same manner, having been awarded an LL.D. in 1790.

I was present on the above occasion in 1954, as an official delegate from the New Jersey State Bar Association. It was an event which will live long in my memory.

IRA BERNARD DWORKIN
Flemington, New Jersey

Zoning Laws Are a Fraud?

I am writing this as a layman.

Isn't it about time that the legal profession gave attention to that bare-faced fraud on the American Public—the "zoning law"?

Here is a typical example of how it works. Fearful of exposing my children to the dangers of industrial traffic, air pollution, water pollution, seeking to avoid the high taxes that always exist in an industrialized area as compared with one purely residential, and desiring peace and quiet away from commerce, I go to an established residential community. Here, bounded for blocks in every direction by houses, I find a vacant lot. I am about to buy it when a real estate man, operating in a nearby undeveloped community, asks me, "Why buy there? I can sell you a better lot in our Shadyside Estates[1] for less money."

I answer, "No. I want to live in a residential area. The nature of your community is not established."

"Oh, don't worry about that," he responds. "This land is all 'A Zone'. Nothing but houses can be built here."

So I build a house on his property. The day I take possession, I see in the local newspaper that across the street from me, a manufacturer is going to build a "laboratory", with an atomic reactor, or a shopping center will be erected.

Day after tomorrow, so the report states, will be the first reading of the new zoning ordinance in the town Council meeting, modifying restrictions on industry from building in the area.

Two weeks later, the councilmen (who are all real estate men or owners of large undeveloped property), give the ordinance the final reading and vote it in.

A group of local residents hastily try to fight the huge industrialist or chain stores who have been planning the deal in secret with the council for months—with the inevitable result. The court holds "The council knows what is best," and it

1. A purely fictitious place.

upholds the Divine Right of Town Councils.

As only people within a few blocks of this plant will feel the effects immediately, (their real estate will decline in value 30 per cent within one block, 20 per cent within two, and 10 percent within three, according to town engineers and personal experience), a few people have to bear the entire load of contesting the council's action. The case goes to court and the verdict is in favor of the "Town Fathers".

Sufficient funds are lacking for an appeal—especially, as our opponents have the resources of a huge industrialist and the council our own tax money to fight us with. So in one more locality the zoning law defrauds a gullible people.

That is what happened in a community which I left a short time ago. The bars are now down. From a fine residential area, it is rapidly degenerating into a hodgepodge of industry intermixed with houses. The plant of which I speak will inevitably—as do all such installations—change from laboratory to pilot plant, then to manufacturing with an inevitable rise in taxes as the community becomes industrialized. So residential property values are destroyed, another community is ruined and the "tax savings" dangled before the taxpayers have already proved illusory.

All over the country, people are being deceived and defrauded in just this way by so-called zoning laws that are not worth the paper they are written on and which the courts never support.

People spend millions of dollars for houses in a community under the impression that they are being protected by zoning laws that local politicians, for reasons that all too often do not bear close scrutiny, regularly upset without difficulty, and that the courts time and again have held, in effect, are worthless, if three out of five of the "Town Fathers" say so.

Yet on the strength of such laws, people all over our land are being induced to spend millions of dollars for homes, only to find out that the

(Continued on page 966)

The London Meeting:

Opening Ceremony in Westminster Hall

A large portion of this issue of the Journal is devoted to a record of the stirring events of the London portion of the Association's 80th Annual Meeting. Many of the important addresses are published in full, including those of Prime Minister Macmillan and Sir Winston Churchill. An account of the proceedings of the business sessions of the Assembly and the House of Delegates of the Association, both at New York and London, will appear in November, along with some other major addresses for which no room could be found this month.

The opening session of the London meeting was held in historic Westminster Hall. On these pages is a complete account of this scene of pomp and medieval pageantry.

The opening ceremony of the London meeting was held in Westminster Hall, a massive gray stone structure built some 850 years ago by William Rufus, son of William the Conqueror. This historic hall was the supremely fitting place for such a ceremony. Notable for its towering oak-beamed roof and other impressive architectural features, Westminster Hall's greatest fame derives from its intimate associations with striking events of English history.

In that great Hall a long line of sovereigns sat at state banquets following coronation ceremonies in Westminster Abbey. There, too, Edward II and Richard II were deposed; Charles I received the death sentence and Oliver Cromwell was installed as Lord Protector; Queen Anne Boleyn and Queen Caroline were there put on trial.

Westminster Hall also served as the seat of the chief law courts of England for many centuries. There were held the great criminal trials of Sir William Wallace, the Earl of Buckingham, Sir Thomas More, the Earl of Essex, Guy Fawkes, Titus Oates, Warren Hastings and many others. There the Courts of Chancery, King's Bench, Common Pleas and Exchequer sat regularly for many years. As was said by Sir Reginald Manningham-Buller, Westminster Hall had for centuries been the "very work-shop of the law"; or as Lord Kilmuir put it, this shrine of English history had been the center from which a system of law "has now been transported to every quarter of the globe".

No equally appropriate place exists in the English-speaking world for such a memorable gathering of judges and lawyers.

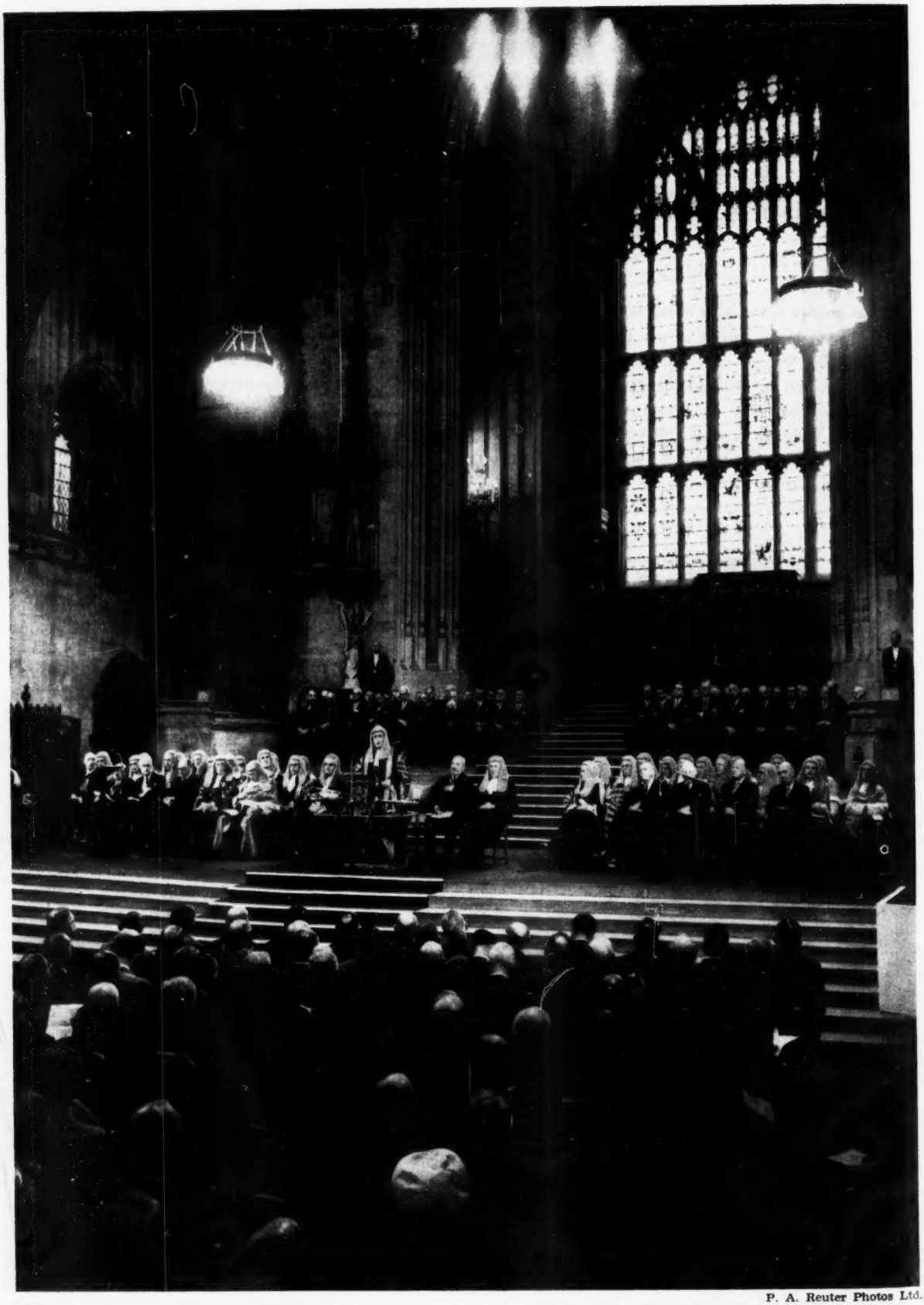
The audience of some 2,000 American lawyers sat closely packed at the north end of the hall facing the vast stone steps which formed a natural stage against the background of a magnificent stained glass window.

On the platform were seated many distinguished leaders of the American and English Bench and Bar. Included among these were Chief Justice Warren, Associate Justices Clark and Harlan, Attorney General Brownell, President Maxwell, members of the Board of Governors and State Delegates of the American Bar Association. The United States Ambassador to Great Britain, John Hay Whitney, and other dignitaries were also present.

Many additional hundreds of guests, including wives of lawyers, for whom seats were not available, were enabled to watch the ceremony on a closed television circuit at a theater in Leicester Square.

As Big Ben sounded 11:00 A.M., a colorful procession of British judges and Law Lords entered the Hall. With due ceremonial and appropriate regard to precedence, they made their way from the lobby corridor down the fourteen red-carpeted stairs to their positions on the dais. At the head of the procession marched the Attorney General, Sir Reginald Manningham-Buller, and the Solicitor General, Sir Harry Hylton-Foster, dressed in plain black robes and full-bottomed wigs. Next came twenty judges of the High Court of Justice clad in ermine-tipped scarlet robes, and following them were eight Lords of Appeal wearing black knee breeches and gowns trimmed with gold braid and embroidery. Next came Lord Merriman, President of the Probate, Divorce and Admiralty Division, and Lord Evershed, Master of the Rolls. Then entered the Lord Chief Justice, Lord Goddard, in heavy scarlet robe with an extra S-shaped band of gold braid as a symbol of authority; and finally, the supreme law officer of Great Britain, the Lord High Chancellor, Viscount Kilmuir, a resplendent figure, attended by the traditional macebearer and trainbearer.

This was ceremonial pageantry rooted in medieval times but still symbolic of English law and order developed over the centuries. It was indeed an inspiring and moving



P. A. Reuter Photos Ltd.

The Lord High Chancellor welcoming members of the American Bar Association in Westminster Hall, Wednesday, July 24.

sight, as was the program which followed.

When the procession had passed down the steps, and all had been seated, the officers and members of the American Bar Association were formally presented to the Lord Chancellor in speeches by Sir Reginald Manningham-Buller, Her Majesty's Attorney General and the head of the English Bar, and by Mr. Ian D. Yeaman, President of the Law Society, on behalf of the Solicitors. The Lord Chancellor, Viscount Kilmuir, then gave his address of welcome, to which addresses of response were made by Chief Justice Warren, Attorney General Brownell and President Maxwell. These speeches, gracefully made to an appreciative audience, are reprinted in the pages of the JOURNAL that follow.

There have, of course, been many historic ceremonies in Westminster Hall. Qualified commentators, familiar with these, acknowledged that this largest international gathering of the English-speaking legal profession, dedicated to maintain and expand the rule of law, compared favorably in importance and dignity with the highest precedents of the past.

The proceedings follow:

Sir Reginald Manningham-Buller, Attorney General of England

My Lord Chancellor, Your Excellencies, Ladies and Gentlemen, I have the honor to present to you the members of the American Bar Association convened here in London for their 80th Annual Meeting. In so doing, may I on behalf of my brethren of the Bar of England extend a warm welcome to our visitors and express the gratitude and deep satisfaction we all feel, that, by the gracious permission of Her Majesty the Queen, we can meet for this great occasion here in Westminster Hall today.

My Lord Chancellor, it will not need many words of mine to bring to mind the place which Westminster Hall occupies in the development of our two peoples; the scene of so many state trials, of William Wallace, Sir Walter Raleigh, Strafford, Warren Hastings and others. For six centuries this place was the very workshop of our law. Today it is a shrine of legal history. There in that far corner sat the Court of Common Pleas, as required by Magna Charta; here, the Court of the King's Bench; there, the Court of Chancery; here, Chief Justice Coke; there, Lord Chancellor Bacon. Just outside, in New Palace Yard, through which you entered this hall, was the Star Chamber, and, close by, the House of Commons. Here is this narrow compass, often in bitter controversy, men of the same calling as ourselves evolved our modern birthright of the rule of the law.

In the next few days, the members of this convention will be meeting fellow lawyers from this country to discuss many common problems of practical concern. For some of us, it will be an opportunity to learn how well the work begun in Westminster Hall has been continued and enriched on the other side of the Atlantic. For others it will be an opportunity to make some return for the unbounded hospitality and kindness always extended by our American friends to visiting lawyers from this country. At this moment, let us not forget that we, too, stand within the stream of history. Thirty-three years ago, in Westminster Hall, the legal profession of this country united with their brethren of the Canadian Bar in welcoming the American Bar Association to London. The memory of comradeship in a devastating war was fresh in the minds of those meeting then. The divisions in the world which weigh so heavily upon us today pressed upon them. They reaffirmed their faith in the spirit of the common law as the guardian of human dignity and freedom.

Today, a generation later, again in the aftermath of war, we face a similar situation, intensified by the developments of modern science, and tension between East and West. Yet I affirm our faith remains the same;

Eric Ager

Sir Reginald Manningham-Buller

and in that faith I believe we lawyers from both sides of the Atlantic have a part to play no less vital than our forebears.

As Coke said, "Out of the old fields must come new corn", and we must show that the great traditions of the common law provide a key to modern problems, while preserving the freedom of the human spirit, the freedom of the individual, the freedoms which have contributed so much to the greatness of our countries. My Lord Chancellor, in this spirit I present to you the 80th Annual Meeting of the American Bar Association.

Ian David Yeaman, President of The Law Society

My Lord Chancellor, Your Excellencies, my Lords, Ladies and Gentlemen:

It is my privilege, and one which I value very highly as President of The Law Society representing the solicitors' branch of the legal profession in England, to follow the Attorney General as head of the English Bar in presenting to you, my Lord Chancellor, this great gathering of fellow lawyers from across the Atlantic, and to add on behalf of my branch of the profession a warm welcome to them on this, their second visit to these shores.

The Attorney General has aptly

said how suitable a setting for a great meeting such as this is this ancient hall, which for six centuries housed the principal courts of law in this country.

Our predecessors here, I suspect, can never have imagined how far those great principles of common law, mellowed by equity, which they built up in judgment after judgment delivered within these walls, would be carried beyond the oceans to the farthest corners of the earth and would forge so vital a link between all the English-speaking nations of the world.

Their great work has served to bind us lawyers together in the common pursuit of justice and in the defense of the liberties of the individual against the oppressor, be he ever so powerful—be it even the state—according to the way of life which we of the Western World understand.

Still less could our forefathers have foreseen that this great hall would be filled to capacity by American lawyers who would come back on a legal pilgrimage to this country in such numbers today that more than 2,000 who would wish to have been in this hall have been unable to attend.

Nevertheless, thanks to one of the creations of modern science, those disappointed ones are at this moment, my Lord Chancellor, taking part in this Fourth Assembly Meeting of the American Bar Association and, linked by television, constitute an unseen audience outnumbering those of us present in this hall who are to be privileged to hear you address us today.

I am indeed delighted that the invitation which both branches of the legal profession in this country jointly tendered to the Bar of the United States five or six years ago has persuaded so many to honor us with their presence.

We are looking forward to the coming week with keen anticipation, in the belief that we shall gain much from the mutual exchange of ideas and by the discussion of common problems which face our profession, wherever we may practice.

It is, of course, true that public confidence in the administration of justice is inspired by the impartiality, wisdom and humanity of the Bench, but I venture to think that it is also true that the ordinary practicing lawyer plays a great part in securing that respect for the law which every stable society must have.

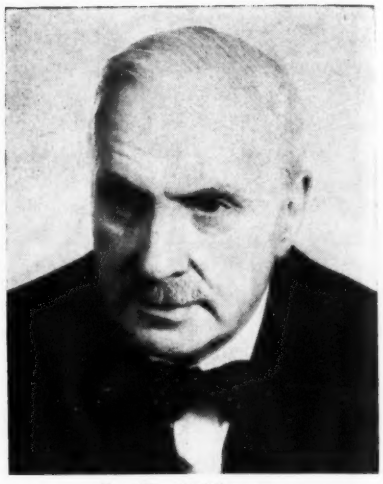
It is by his independence and diligence and by the subordination of his own and all other interests to those of his client in court as well as in that great volume of business which never comes before the courts at all, that the public realize—or should realize—that the law and the lawyers exist to serve the needs of the people and to provide the practical solutions to problems which face them.

But now, my Lord Chancellor, I must no longer stand between you and your audience who are anxious to hear what you have to tell us, and I therefore only want to add, in presenting them to you, that when the time comes, as it inevitably must, for our friends to depart, we hope sincerely they will take away with them the happiest recollections of their visit here and that they will leave in the certain knowledge that they have indeed been most welcome guests.

The Right Honorable Viscount Kilmuir

Chief Justices, Attorneys General, Presidents, my Lords, Ladies and Gentlemen:

It is thirty-three years since the American Bar Association last held its annual conference in London, and assembled in this famous hall to be welcomed by the Lord Chancellor and His Majesty's Judges. I was too young and insignificant to be present at that great occasion, but I have never lost, Mr. President, the deep impression that was made on the imagination of a young man at the threshold of his life's work in the law, by the sense of communion, so clearly exhibited at that time, between the lawyers of our two nations. It was evident then, and it will be evident in the coming week,



Ian David Yeaman

that although you may sometimes wonder, when you ask for the elevator or hear a noble game described as rounders and played with a soft ball, whether we speak the same language, yet we speak the same thoughts; and our attitude and very often our practice is largely identical in dealing with these things that are the special concern of all lawyers everywhere—birth, misbehavior, freedom, death, quarrels, incorporated activities, and so on—the daily commerce of the lawyer in which he is generally too busy to form theories.

I hope, Mr. President, that you and your Association will not delay another thirty-three years before visiting us again: but, even so, I most fervently pray that those years will show some improvement on the thirty-three years that have just passed, which have been perhaps the most grievous that have afflicted the civilized world since that period which we are still bold enough to call the Dark Ages.

In 1924, a young lawyer such as I thought of the rule of law as something unassailable: we imagined that the horrors and sacrifices of the First World War had not been futile, and that mankind had at last learnt its lesson and would henceforth live in accordance with reason and with that need for harmony and peace which is instinctive in us all.

What happened to these fond imaginings? Every single belief which we held was furiously assailed; every

hope that we nursed was disappointed; reason was once more dethroned; one brutalizing dogma after another was propagated and bore dreadful fruit. The house that we thought to be empty, swept and garnished, was entered by seven other devils more wicked, and the last state of man appeared indeed worse than the first.

In those times many felt with the great Irish poet that,

> The best lack all conviction, while the worst
> Are full of passionate intensity.[1]

In this situation some lost their nerve and in the years of tyranny that seemed to have been loosed upon the world took comfort in doctrines that exalted authority. They lost confidence in the free legal and political systems which are the heritage and pride not only of our two nations but of the Western World, and of all those countries in Asia and Africa that have been nurtured in the noble and fruitful ways of the common law.

However, as it turned out, there was no need to have been so alarmed, or so doubtful about democracy's power to survive. One fact that has been made abundantly clear during the terrible period of trial (for that is how I regard it) through which we have been passing is that (to put it at its lowest) a tyrannical society is much less efficient than a society which is free. We had always hoped that this was so because we had been brought up to dislike tyranny, and in these small islands had spent much blood, over the centuries, in resisting it. But there were moments when the loud noises which tyranny made and the formidable façade which it presented to the world unnerved those who had forgotten, or were unaware of, the inherent weaknesses of authoritarian rule. History has taught us, time and time again, that no society can for long endure which is not based on morality and order.

But it takes time to build a free society and a sound system of justice; and sometimes outside help can be useful. We in this country have had the great good fortune to have been conquered and, if I dare to use the dreaded word, colonized twice in our history; first some two thousand years ago by the Romans who brought us not only civilization with an ancient legal basis but also Christianity, and secondly some nine hundred years afterwards by the Normans who also brought us great blessings, not perhaps fully appreciated by us at the time, but in the long run most beneficial in the sphere of law and government. Since then we have contrived to deter the arrival on our shores of all other prospective benefactors and some of the benefits which they sought to confer on us.

This great hall in which we are now assembled was built 858 years ago by a Norman—William Rufus, the son of the Conqueror, who was disappointed with it and declared that it was a mere bed-chamber compared with what he had intended to build. It was in this very hall that in the year 1224 King Henry III ordained "three judgment seats to wit, at the entry on the right hand the common pleas, where civil matters are to be pleaded such as touch lands or contracts. At the upper end of the Hall, on the right hand or south-east corner, the King's Bench where pleas of the Crown have their hearing: on the left hand or southwest corner sitteth the Lord Chancellor accompanied by the Master of the Rolls and other men learned for the most part in the civil law and called Masters of the Chancery, which have the King's fee."

From then, for the next 658 years until the new Law Courts were built in the Strand, this hall was the center of the law of this land and saw the gradual building up of that system which has now been transported to every quarter of the globe. These venerable walls have echoed the voices of the famous judges and pleaders whose names are as much a household word to you as to us. St. Thomas More, one of the greatest and certainly the best of my predecessors, whenever he came to this hall made a typically graceful gesture. His father was a puisne judge

Paul Popper

Viscount Kilmuir

of the King's Bench and St. Thomas More, on his way to take his seat as Lord Chancellor, always stopped at his father's court and bowed. Peter the Great of Russia visited the hall in 1697. He was astonished to learn that all the busy men in wigs and gowns hurrying about the hall were lawyers. "Lawyers!" he exclaimed, "Why, I have but two in my whole dominion and I believe I shall hang one of them the moment I get home."

All this great past we share with you, yet there is a doctrine which we both share with a wider community even than that of the common law, but which has, for various reasons, become a little dusty and old-fashioned in recent years, and which I myself should like to see refurbished and restored to the position which it once used to occupy. I refer to the doctrine of the law of nature, one of the noblest conceptions in the history of jurisprudence. Lord Bryce, once British Ambassador in Washington, who is believed to be the only Englishman (and I have heard a typically generous American say the only human being) who has ever understood the American Constitution, described the doctrine as it appeared to the Roman jurists thus: ". . . the Law of Nature represented to the Romans that which is conformable to Reason, to the best side of Human Nature, to an elevated morality, to practical good sense, to

1. W. B. Yeats, "The Second Coming".

general convenience. It is Simple and Rational, as opposed to that which is Artificial or Arbitrary. It is Universal, as opposed to that which is Local or National. It is superior to all other law because it belongs to mankind as mankind, and is the expression of the purpose of the Deity or of the highest reason of man. It is therefore Natural, not so much in the sense of belonging to man in his primitive and uncultured condition, but rather as corresponding to and regulating his fullest and most perfect social development in communities, where they have ripened through the teachings of Reason."[2]

Our two nations, socially and legally, are highly evolved and the law of nature is so firmly embedded in our jurisprudence that it only occasionally shows above the surface, as in the inherent power of our own courts here to avoid a judicial or quasi-judicial decision on the grounds that it is "contrary to natural justice"—a phrase of which everyone knows the meaning but which no one, thank heaven, has finally defined. But although, as I have said, our system of law is highly evolved we need always to remind ourselves that the law cannot stand still, that it must, in Bryce's words, always be "conformable to Reason, to the best side of Human Nature, to an elevated morality, to practical good sense, to general convenience". There lies our duty as lawyers.

And there is another side to the law of nature that we must not forget. "You may throw out Nature with a pitchfork," said a Latin poet who was also a good gardener, "but she will always come back." *Naturam expelles furca, tamen usque recurret.* What we are seeing now in some parts of the world where it was least expected is, I am convinced, a spontaneous expression of that timeless longing, inseparable from the human condition, for justice, for the acceptance and fulfillment of the requirements of natural law which recognize that man is born to die and has but a little time to fulfill himself and to care for those to whom he is bound by ties of friendship and love. That the young in those countries, blinkered and intellectually constricted from birth, should nevertheless express these needs is, in my belief, yet another manifestation of the workings of the law of nature or, as it became known in medieval times, the law of God.

Therefore let us be of good heart. The ideals which underlie the laws of our two countries have outlasted many tyrannies and have seen the decay and death of many specious theories. The reason why that anvil has broken many hammers is (once more in Bryce's sober words) that these ideals are "comformable to the best side of Human Nature" and an "expression of the highest reason of man". Moreover, our laws are not static any more than society or human nature is static. Their roots, well grounded in history and watered by wisdom, are constantly putting out fresh branches and leaves for the comfort of mankind. The vitality of our institutions is demonstrated by such a great gathering as this, of professional men and women seeking constantly to improve that contribution to the well-being of the community which it is their duty and vocation to make.

Mr. President, my brother judges and I are happy to welcome you and the members of your great Association, of which some of us are so proud to be honorary members, to London. We offer you our warmest wishes for the success of your conference and a fruitful outcome to all your deliberations. We look forward to the many occasions during the coming week in which we shall have the opportunity to meet and talk with you, so that widespread personal friendships will reinforce the acute professional understanding already inherent in the brotherhood of the law.

Chief Justice Earl Warren

We come as pilgrims to your beautiful land—not, however as the Pilgrims of three and one-half centuries ago came to our shores in search of a new home in a new land. We come as pilgrims to a shrine. With the blood of different races in our veins, and separated at home by distance as great as from our Atlantic shore to yours, but with one language and one concept of law, we make our pilgrimage to the land which gave both of those characteristics to our nation. Dedicated by birth to that language, and not only by birth but by profession to that concept of law, we come here in the spirit of brotherhood.

You are most generous to receive us, in this cordial manner, in historic Westminster Hall where for so many centuries free institutions have been fashioned and the human values which we prize so highly have been preserved and kept adaptable to an ever-changing world. It is with a feeling akin to reverence that we temporarily occupy the same seats which for ages have been used by those who hammered out the rights of mankind, as we conceive them to be, on the anvil of human experience.

Recently the second *Mayflower* made its colorful voyage to our shore. It has delighted us and stirred our historic interest. It was a splendid gesture of good will, and it is greatly appreciated. But it was the voyage of the first *Mayflower* that always thrills us. What a precious cargo it carried—102 men and women of religious faith, of resolute courage, and with the determination to make new homes in an unknown wilderness, under free institutions of their own making, in keeping with the dignity of Englishmen. As untutored as most of them were—and being a minority group, as unaccustomed to governing as they were—even before they set foot on American soil, they made the simple but solemn compact from which we trace that part of our constitutional system for which we claim credit. They covenanted to combine themselves together into "a civil body politic, for [their] better ordering and preservation",

2. Bryce, STUDIES IN HISTORY AND JURISPRUDENCE, Volume II, page 589.

Chief Justice Warren

to enact "such just and equal laws . . . from time to time, as shall be thought most meet and convenient for the general good of the Colony" and under which they promised "all due submission and obedience".

We, in all parts of America, have tried to keep the faith with that compact. And except for the deviations occasioned by the frailty of human nature and the fallibility of the human mind, we have pursued a steady course to this day. It is still the core of the American's creed and our concept of "Government of the people, by the people, [and] for the people".

Not the least precious part of the cargo brought by the Pilgrims on the first *Mayflower* was the common law. It certainly was the most enduring. They brought it, not in books, but in their minds, in the assumptions they carried with them regarding the rights of free-born Englishmen. Modern scholarship has furnished increasing proof of the reception of the common law in the Thirteen Colonies. It was the common law in its most significant and vital aspect—not as a fixed body of rules, but as a mode of ascertaining and devising rules to meet the particular circumstances and changing conditions in which controversies and conflicts arise between man and man and man and government. That is the distinctive aspect of the common law; that is its glory. And I venture to believe it has been most strikingly and most fruitfully illustrated by what may be compendiously called the reception of the common law in the colonies and then, upon gaining their independence, in the states, and its prevalence in the United States today barring only Louisiana. There, too, it has been infused into the basic law of the Code Napoleon, just as the common law has had its considerable influence upon the basic Dutch-Roman law of South Africa.

The hold of the common law in the United States is to be fairly deemed one of its most striking achievements because the adaptation that it has had to make in developing a new continent best proves the sturdiness of its roots. This early rooting of the common law in the United States was due in part to the very important influence exercised in the colonies by English-bred lawyers. They came to England from every colony, but particularly from the Southern States, and were members of all of the four Inns. The habits of mind which they formed concerning the liberties and rights of the subject make it not surprising that among the leaders of the Revolution and the signers of the Declaration and the framers of the Constitution were these English-bred lawyers.

England, as a training ground for colonial lawyers was thus an important chapter in the unfolding of our law. Equal in importance, if not greater, must be deemed that classic of the common law, Blackstone's *Commentaries*. The story is old, but its meaning is permanent. The four volumes of the *Commentaries* were published in England between 1765 and 1769, and of these a thousand were imported into the colonies. Even more striking is the fact that for an American edition published in Philadelphia in 1771-1772, 1,500 sets were subscribed. Edmund Burke was well justified in telling the House of Commons that: "In no country, perhaps, in the world is the law so general a study."

It is stating a fact and not boasting that, in all the countries where English is the tongue of the law, the common law has shown itself to be a process of constant rejuvenation to meet the demands of a progressive society, and particularly to make its adaptations to the new institutions which our industrial civilization has thrown up. Our law reports and yours make manifest the uniformity of influence bebetween your courts and ours.

With you, as with us, however, lawmaking has for some time now ceased to be merely the law evolved by courts out of the principles of the common law. Long ago, the far-sighted Sir Henry Maine foresaw that legislation would become the greatest energy of lawmaking. This prophecy has been vindicated both in England and in the United States and, indeed, in all the English-speaking nations. In my Court, hardly a case arises in which legislation is not involved. But, even so, the methods of the common law are drawn upon, that is, the habits of mind with which, and the considerations by which, lawyers trained in the common law approach the judicial problems that legislation so often poses.

Insofar as the common law concerns the areas of judicial business, which that phrase conventionally implies, I speak with a feeling of nostalgia. For the Court, which I have the honor to represent, has long ago ceased to be, within this narrow meaning, a common law court. Its adjudications are now confined, broadly speaking, to questions arising under the United States Constitution and like problems of essentially national importance. The axis on which they turn is the nature of our legal system, and this is so very different from your own. You are spared the complexities of our federal system, but are also denied the intellectual exactions which such a system makes upon lawyers.

But whether our concern is with a unitary system of government, like your own, or with a federal system

such as those in Australia, Canada, India and the United States, a foundation of the common law has always been adequate for the maintenance of free institutions which meet the exactions of freedom-loving people. It has been adequate for us since the establishment of the first English colony in America.

Today and for some months in little Jamestown, Virginia, our people are celebrating the 350th anniversary of the establishment of that colony. Replicas of the three little ships which made that historic voyage ride at anchor in the James River. They represent much to us, and we celebrate the occasion not only as the first but as one of the most important milestones in our national history. In doing so, we express our great admiration for the things these Founders brought with them—a belief in God, love of freedom, and a concept of law upon which our free institutions have been built. This visit to you is but another manifestation of our lasting appreciation of that legacy.

Attorney General Herbert Brownell, Jr.

Here in Westminster Hall—this place of sacred institutions and traditions running back through the centuries and the precious heritage of all English-speaking peoples—there crowd in upon us today memories of the historic events which have occurred in this great chamber, signalizing as they do the efforts of men to gain and preserve their freedom.

We love to recall the panoply of events during which the individual, by dint of hard and persistent struggles to obtain his cherished rights, gradually secured them from the forces of power and privilege.

Looking back, the ultimate outcome seems always to have been assured; but for those who staked their all on the cause of the individual, the result rarely appeared certain. The obstacles seemed insurmountable. With deep respect and admiration, accordingly, we appear here today to do honor to these common ancestors and their historic sacrifices, a price that was often paid in blood or attainder.

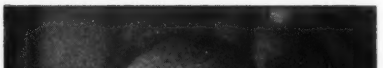
President Eisenhower has asked me to bring to you his warm regards and personal satisfaction in this meeting together of our Bars. He cherishes fond recollections of the generous hospitality of your country toward our men while they have been here. He expressed the hope that we might find time during our deliberations to give some thought to the ways to attain a just and durable peace—the cause for which he is devoting his life. And he recalled to our attention the supreme importance of law in the domestic and foreign policies of our country, as set forth in his address to the American Bar Association in Philadelphia on the 200th anniversary of the birth of Chief Justice John Marshall:

> Our nation is ranged with those who seek attainment of human goals through a government of laws. . . . Eagerness to avoid war can produce agreement that injustices and wrongs of the present shall be perpetuated in the future. . . . But we must never agree to injustice . . . well knowing that if we accept destruction of the principles of justice for all we cannot longer claim justice for ourselves.

We of the American Bar, it seems hardly necessary to add, are delighted with this occasion to be with you. In our common background of learning and devotion to freedom under law, we have bonds which defy all efforts at destruction; a deep mutual respect that has its roots in the ages; and an understanding that has been nurtured by joint action in the defense of all that is dear to us both.

After a third of a century, we have returned to meet together here—returned to rededicate ourselves to the cause of justice at your historic shrines of freedom. Your endless efforts to declare and obtain the basic rights of a free people here in your homeland, and thereafter to retain each one against all encroachments, cannot be adequately acknowledged.

Then, too, in pushing out your frontiers from these islands you sent your representatives to all the continents. By that action the entire world came to know and respect English justice. It came to respect your insistence that both the administration of the law and the trial of cases be fair. You can take great pride in this incomparable achievement. In our country we are most grateful for these precedents.



Herbert Brownell, Jr.

The keystones of government by law—due process, freedom of speech, jury trial, freedom of the press, fair trial and freedom of worship—have for us all a ringing appeal. And we have a serene confidence that all mankind, when allowed the choice, will claim these invaluable rights. Just yesterday, for example, we observed the Hungarians confirm our faith in the insatiable appetite of all people for freedom—an urge that will brook impossible odds for its satisfaction, proving to the entire world that life without freedom becomes unbearable. We must not allow their efforts and tragic martyrdom—and those of other oppressed persons—to be in vain.

Together, we are committed with the other free peoples of the world to the goal of a world-wide application of principles of justice under law—an inspiration that all men and institutions will be governed by a reasoned law and not by the whim or ca-

price of any man or group who is not thus restrained.

Experience has taught us the value of law and order. We have learned that a society so governed prospers and develops a rich culture that is strong and provides for the security of individual rights. Without such a system of justice we have observed that a country, even with vast material resources, produces an anemic, pitifully undernourished culture, with fear, insecurity and distrust the lot of every man.

In many parts of this planet, men of every color and background are awakening to the immeasurable worth of a free way of life. They are coming to know that through education and enterprise this free way of life can be possible for all. They are revolted by the brutal use of force to repress freedom under totalitarian dictatorships.

The current contest between ideologies for the minds of men has done us, too, a signal, if unexpected, service. It has cast in sharp relief what we have and support, against the backdrop of the terrible tyranny of totalitarian governments and their ruthless domination over the lives of human beings. In defending the ways of a free people we have been forced to compare our systems so that all who are able to learn may make a choice.

As a result of this analysis of our way of life, we must inevitably conclude that our greatest deficiency is that we have not yet applied our knowledge of how men may govern themselves by law to the determination of all disputes between countries. The Creator has now given us the means to destroy all mankind in another war. But the same gift can be harnessed, under the aegis of a system of international law, to serve the limitless needs of all nations in peace. The blessings possible to the underprivileged as well as all others are incalculable.

The opportunity now presented for men and peoples skilled in the law is therefore the greatest of all time. The prize of success is the preservation of all peoples and cultures of the world. While any attempts will be fraught with difficulties that may appear today to be insoluble, we cannot be deterred by that. We must all try again and then again.

What we need is the development of the law of nations in our age which will first bind the countries of the world into solemn voluntary pacts governing their great interests on the world scene, in contrast to unilateral exploitations by the mighty. It has been well said that the emphasis in international life must shift from torts to contracts. And also we must perfect a machinery for settlement of international disputes—not now and then or occasionally but on a total basis—under a tribunal or system of tribunals which will command general confidence as to the fairness of their judgments and whose procedures will be supported by a public opinion which will not tolerate a departure from them. We must establish an era where nations as well as individuals are subject to justice under law.

A civilization which has brought forth the methods of the common law and developed the bill of rights should not shrink from this new command from a sorely troubled humanity. Creating a system of law for the nations of the world should not be beyond its competence. That should not be more difficult than the development of the rights of man to justice under law. In addition, today, we have a new factor to help in the acceptance of such a plan—a compulsion to try to preserve life itself which is a force that will not be denied. Certainly the peoples of our host country who did not flinch or hesitate when one of their greatest leaders, Winston Churchill, offered them only blood, toil, tears and sweat will respond to this new challenge.

We of the American Bar avidly look forward to laboring with your men of the law and to joining hand in hand in such a common effort—a work which we could do in behalf of the entire world. It would be a search for a means to apply what we have learned of justice between men to the affairs of nations.

Again the English-speaking peoples could be working together in a further cause for peace—a way at last to lift from the backs of all the crushing burdens of producing and supporting vast armaments, and substitute an age of peace. Thus, we would engage in a consecrated effort in which, with God's help and ample patience, we would have to succeed.

President David F. Maxwell

I stand here today where that great American statesman Charles Evans Hughes, then Secretary of State of the United States and President of the American Bar Association, stood thirty-three years ago. In eloquent terms, Mr. Hughes acknowledged the debt of the American people to you, our British friends, for your legacy to us of the common law. Today you have heard our Chief Justice and our Attorney General reaffirm this obligation which the passage of time has not obliterated or even dimmed.

Those of us who are here today represent a quarter of a million lawyers of the United States. The number itself is significant because in 1924 when Mr. Hughes addressed you there were but half that number. Thus it is not surprising that today there sojourns in your famous city approximately twice the number of lawyers who attended our historic meeting of thirty-three years ago. You will forgive us, I trust, if we have perhaps strained your hospitality in descending upon your shores in such great numbers, and accept this influx as an expression of the high esteem of the lawyers of America for you.

In his inspiring address, delivered in this same venerable hall, Mr. Hughes discussed two domestic problems which then confronted us in America and which, as coincidence would have it, are still with us. The first, which is common to both of us, relates to the inroads being made by

administrative law upon the common law, in fact, superseding it in many areas. Mr. Hughes described this issue in these words: "The spirit of the Common Law is opposed to those insidious encroachments upon liberty which take the form of uncontrolled administrative authority and an ancient tyranny, not the more welcome to intelligent free men because it may bear the label of democracy."

That the problem is still with you, as it certainly is with us, was evidenced by the remarks of your Attorney General before our Association at its meeting in Dallas last summer. He then said: "The whole aspect of these administrative tribunals is under examination by a strong committee headed by an old friend of yours, Sir Oliver Franks." We too have been much concerned with the rapid growth of administrative practice in the United States, which, like a huge octopus, has been spreading its tentacles into every phase of human activity. The American Bar Association, as early as 1933, probably to a great extent inspired by the admonitions of Mr. Hughes and other American leaders of that day, took cognizance of the problem, and, after waging a twelve-year campaign, succeeded in 1945 in having the Congress enact legislation resulting in widespread reforms. However salutary these measures may have been, the expansion of these administrative agencies has continued unabated so that once more the attention of our Association is being focused upon their practices and procedures for the purpose of making them conform more closely to the principles of the common law.

The other domestic problem to which Mr. Hughes invited your attention at the 1924 Convocation was of purely American concern, having to do with our Supreme Court. In referring to the manner in which the Court at that time was performing its vital function in the pattern of our republican form of government, Mr. Hughes said:

> This delicate and difficult duty has been well discharged and notwithstanding repeated efforts to undermine this jurisdiction of the Supreme Court of the United States as a final authority in the interpretation and application of the law, it retains its hold upon the confidence of the people. I believe that the attacks upon it, once more renewed, will again fail.

Mr. Hughes' estimation proved to be prophetic because the Court has in fact since then successfully survived repeated attack. Now, once again, it is being subjected to a barrage of criticism, generally from sources outside the Bar, which is sweeping the United States. While I do not profess to have the keen foresight of Mr. Hughes, I have no hesitancy in predicting that the Court will withstand the present assault and will continue to be as always a true bulwark of our American freedom.

The similarity of the domestic problems of those days with the present is in marked contrast to the international situation. In 1924, the phrase "cold war" had not as yet been coined. Herr Hitler was safely incarcerated in Lansberg, Bavaria, after the failure of his Munich *putsch*. *Mein Kampf* had not yet been published and the Communist Internationale was still in its infancy, untried and untested. There was a serenity in the world in 1924, which, illusory though it proved to be, lent a sense of security to the scene. You can search the record of that 1924 meeting from end to end without uncovering a single word referring to international tensions.

How changed conditions are today. True, an uneasy peace pervades the world, but we are not deluded by it. On the contrary, we are well aware of the menacing shadow of an atomic holocaust hovering over the council chamber where even now our representatives seek an effective formula for world disarmament. The outcome of their deliberations, unfortunately, is not likely to narrow the gap between two widely divergent ideologies vying for the hearts and minds of men. On the one hand, there is the true spirit of the common law upholding the dignity of the individual, while, on the other, the Communist philosophy of

David F. Maxwell

absolute state domination. You in Britain have exemplified the one by voluntarily, within the last decade, granting independence to more than 500 million people, while the exponents of the other have been tightening the yoke of tyranny upon 100 million others. The timetable of your inspiring actions—India and Pakistan in 1947, Burma and Ceylon in 1948, the Sudan in 1956, and this year Ghana—has aroused the admiration of the whole world. We are told that your present plans call for the extension of this policy to more than 100 million additional people in Malaya, Nigeria and the West Indies as soon as they can be adequately prepared to govern themselves. In all of these countries you have left in your wake the priceless heritage of the common law, through which their governments may maintain the freedom which you so graciously granted them. These enactments of your Parliament have made hollow mockery of the widely published accusations of colonial aggrandizement against the Western Powers.

Meanwhile, the whole world has seen the *modus operandi* of the other camp in the international arena during the cynically brutal repression of the Hungarian bid for freedom and national self-determination. Shopworn clichés will not suffice to honor the heroes of Budapest; we simply pledge to keep ever

before us the example they set. They fought and died for the principles to which we now restate our dedication.

Today sinister forces are assiduously endeavoring to drive a wedge between your people and ours. We have been the target of those who would rejoice in our cleavage but they shall not succeed. This meeting, My Lord Chancellor, is in itself a demonstration of the deep-rooted feeling of affection and bond which our people have for yours. We who are here now are but ambassadors of good will to express to you the sincere and abiding friendship of the 165 million people of the United States for the peoples of your land. That we are here in such numbers, perhaps more than you had originally contemplated, is simply a manifestation of the depth of that feeling.

Misunderstandings have at times arisen between us, but these have always been settled and always will be, God willing, by conferences at the family table, for we are one family bound together not only by a common mother tongue, but by what is even greater, a deep conviction that the fate of man depends upon the rule of law.

May I then conclude as I have begun, that we of the American Bar are greatly indebted to our friends of the Council of the Bar and the Law Society for the gracious invitation which has made it possible for us to be with you on this occasion, and to express the hope that our visit will still further cement the already strong bond which has always existed between us.

Westminster Abbey, where members of the Association attended church services before the opening session of the London portion of the Annual Meeting in nearby Westminster Hall. One of the landmarks of the City of London, every English monarch since William the Conquerer, except Edward V, has been crowned in the Abbey, and many of England's greatest men are buried there.

Trans World Photographic Co.

The Prime Minister's Address

At Royal Festival Hall, London

Seldom, if ever before, in the history of the American Bar Association has a speaker at one of our meetings been greeted with the thunderous applause that Prime Minister Macmillan received when he rose to address the Sixth Session of the Assembly. The scene was Royal Festival Hall, whose dignified, simple modern architecture was in marked contrast to the medieval splendor of Westminster Hall. The spontaneous enthusiasm was a tribute to the Prime Minister himself and to the people of Britain whose warm hospitality had won all the visitors. The Prime Minister was introduced by John Hay Whitney, the American Ambassador to the Court of St. James.

Ambassador John Hay Whitney

I have, this afternoon, a double privilege. I am happy—personally and officially—to welcome the American Bar Association to London. And it will be my pleasure, after just a moment, to introduce Her Majesty's First Lord of the Treasury, Prime Minister Macmillan.

But first I should like to congratulate you gentlemen of American law on your decision to gather in London, with your British colleagues, for certain sessions of your Association's 80th Annual Meeting. I believe this was an important, even an inspired, decision, and I know it will be rewarding.

You have, of course, a mission. By the very fact of being here—in London, in the British Isles—you have assumed a large measure of international responsibility. Your presence is an implicit recognition of the great and continuous need for the achievement of a deeper understanding between the peoples of Great Britain and the United States.

I think most of you would be willing to agree, as I securely believe, that the British, in their Atlantic islands, constitute the cornerstone of the Atlantic community, and hence the essential foundation of American relations with Western Europe. Our Anglo-American community of interest is obvious, but I invite you to observe that the rhetoric of common inheritance is not always without flaws. As some of our British friends reject the cliché of a common language, so also there are some who will declare that the spirit of the English common law has been altered—at very least, watered down—in the United States. Plainly there have existed differences in the theory and practice of politics in our two countries.

I am saying to you that as nations neither of us can afford to take our cousinhood for granted. We profoundly agree on peace with honor, and on justice, and on the noble concept of individual freedom; we are dedicated to government by law and under God. These beliefs are basic and unshakable; but our mutual adherence to great principles does not—now or tomorrow—obviate the hazard of disagreement over the avenues we take to reach our goals. Hence I have emphasized the need—now and tomorrow—for fullest understanding between our peoples; and I emphasize too the role you have elected to play. I am confident that meetings such as you are engaged in, between the legal professions of both countries, will revitalize our common dedication as a harmonizing force, and at the same time bear witness, for the world's attention, to those safeguards of individual rights that are so cherished and defended by the judges, the lawyers, of our two nations.

Now an important part of my job abroad is filling the role of interpreter—to try to interpret for Washington the thinking and the actions of this country, and, conversely, to interpret our thinking and actions to the Government and the people of Great Britain. Not infrequently I quail at the size of this task, for on clear understanding of each other, and a will to accept and not misinterpret our differences, may well depend the peace and the security of the world.

Only in a strong link is there an

ultimate security—that is why we of America want our allies to be strong. We welcome the signs—everywhere apparent—of the growing strength of our friend and ally Britain.

The upward movement of her export trade has been notable in the past year, with the United States now ranking as the number one overseas market for British goods and services.

We welcome Britain's arrival as a nuclear power, for we know that she will use this power wisely and well for the safeguarding of peace and freedom in the world, and for the benefit of humanity in fields of science and industry.

We follow with deep interest the Western European movement toward economic integration and closer political collaboration, and the indications that Britain will participate in these imaginative projects. We welcome them because of the possibilities we see for a fresh development of all these good neighbors. British influence in world affairs, which has for so long served the best interests of mankind, is already in a period of new growth.

You will, while you are in England, see this growth for yourselves. Many among you already know England, and some of you know it well; but to those of you who don't, I'd like to say: Make the most of the opportunity, see as much as you can of the people, the historic cities, the splendid cathedrals, the glories of art—but above all, meet the people. You will of course meet them with open minds and hearts, if you're to know and appreciate the Englishman, and what he stands for, and why. And give the Englishman a fair chance to meet you, remembering, as you go, that all our ideals and all our aspirations translate—in the end—into human terms. It seems to me of very greatest importance that we should make ourselves known—as *people*.

I think it not amiss to remind you, here, of the warm personal relationship between President Eisenhower and the Prime Minister—a link forged by mutual convictions and by a sharing over the years of mutually shouldered burdens of state. Out of my own experience, I can assure you that the Prime Minister shows, not only in words but in action, his sympathetic understanding of the problems of our country.

Most of you are aware that the Prime Minister's mother was an Indiana girl, which inevitably implies in his own person an effective merging of the Anglo-American cultural heritage. It has, in friendly jest, been said of Mr. Macmillan that if he makes any mistakes, they'll be half American—which gives the Prime Minister a signal advantage over me, for my mistakes will be all American.

Again I cordially welcome you to London, and wish you every success. I have the honor to present to you our friend, the Prime Minister of England.

John Hay Whitney

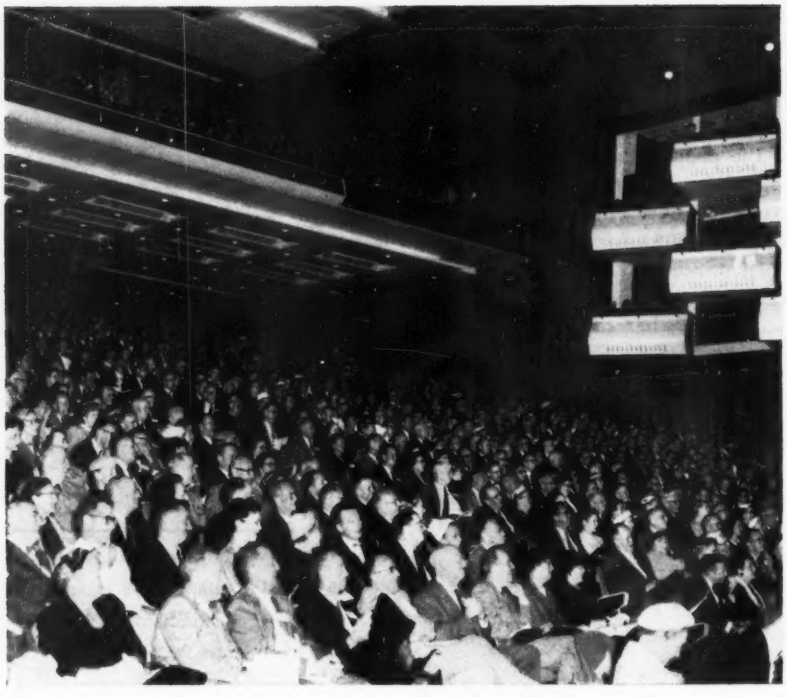
The Right Honorable Harold Macmillan, M.P.

A great Lord Chancellor, Francis Bacon, said once: "The worst solitude is to be destitute of sincere friendship." History is full of examples of nations, as well as individuals, who have known such solitude and, indeed, who know it now. But the sincere friendship of the United States and of the United Kingdom is not in doubt, nor are our guiding principles. They are: common justice and common sense.

It is a very great honor for me to address the members of the American Bar Association in London and to welcome you here today. I am bound to be frank and tell you that I have looked forward to this event with a great deal of trepidation. I should not find it easy to address several thousand lawyers of my own country, or indeed of any country, and I am sure you will not expect me to enter into any profound analysis of our constitutional law and the long series of events through which it has been developed. But I have, as the Ambassador reminded you, one qualification which I will exploit to the full: like the greatest man in my country today, and quite a lot of people in the United States, I was born of an American mother. And since most of you have had that advantage, you know what it means.

On my mother's side, I am descended from two strains, the families of Tarleton and Belle who were Southerners originally from Kentucky and Virginia. My grandmother was a Reid from New England. My grandfather, after some wandering, settled in Indiana and became a Hoosier. Well I remember this of my childhood, that as on many other families there fell upon ours the full impact of that great conflict in the United States between the states. Like many other families, they found themselves with sympathies and roots on both sides. On my paternal side, my grandfather was born in a Scottish croft and like many other Highland lads found his way to England and to London to seek his fortune.

I only mentioned these facts to



Members of the Association listening to the Prime Minister's address in Royal Festival Hall.

show you I am quite an unsuitable person to talk about the English law. I know nothing about it whether by inheritance, tradition or, I am ashamed to say, by study. Still, I am told that the English common law has normally been best looked after by Scotsmen. Perhaps the greatest of our English Lord Chief Justices whose judgments on the law merchant are so highly regarded with you, was Lord Mansfield, a man of immense learning and great character and, so far as one can judge from the extent of the properties, lands and castles that he left behind him in Scotland, he seems to have done quite well out of the English law. We have also had our fair share of Lord Chancellors; Lord Erskine and Lord Campbell, of whom it was said that he forced longevity upon his contemporaries by the fear that if they died, he would write their lives.

In more recent times, Haldane was Lord Chancellor in 1924 on the first occasion when the American Bar visited London. And now, another Scot, loved and respected by us all, Lord Chancellor Kilmuir.

As I have said, I have really no legal qualifications to address you, and I was really quite frightened as to whether I should gain admittance here at all. There is a story told, I forget of what period, during some civil disorder, that it was regarded as a wise precaution to take the very exceptional measure of excluding the public from the law courts; the problem then arose as to how to admit the counsel and solicitors. It was not practicable to arrange to give them all passes, and, so it is said, the authorities hit upon an idea; they told the man at the door to apply this test: if anyone claimed to be a lawyer and tried to come in, he was asked there and then to prove his bona fides by stating the Rule in Shelley's Case. As a precaution, of course, the doorman was secretly instructed to accept any statement of the law whatever, without too much scrutiny as to the difference between words of limitation and words of purchase, anything which sounded as if it might have been the rule.

I am very glad to see that no one applied this test when I came here. I have no doubt you could all have passed it, for it is based upon a long tradition of common law which unites our two legal systems.

I was told the other day, when I had the honor of entertaining some of you to luncheon at No. 10 Downing Street, that there would be a fine exacted—a modest fine—from anyone who would mention the name of Blackstone; but I propose to pay the fine and go on with my speech. There is a very fine copy of Blackstone in the Prime Minister's library at No. 10 Downing Street, and I could not resist taking it down just to look at the titles of the chapters in my search for *Shelley;* and they give you a great thrill, the splendid names of *estates in possession, remainder, reversion, estates in severalty, joint tenancy, coparceny and common,* and then the phrase: "title to things real in general". And of course, as you have been no doubt too often reminded, and will be reminded, I think, on Sunday when you go to the very place, it all goes back a long way, right back to that fifteenth of June in 1215 when Magna Charta was signed. That event was the first of a series of great charters of human freedom, the Bill of Rights, the American Declaration of Independence, the United States Constitution and, I like to think, the Atlantic Charter which your President and our Prime Minister compiled together on a battleship in the dark days of the war.

You have met this week in Westminster Hall. It is more than thirty years ago since Chief Justice Hughes made there a remarkable speech. He pointed out that Blackstone was wrong in the view that the common law of England as such, I quote his words, "had no allowance or authority in the American Plantations". Certainly that was not the American view. In America, Chief Justice Hughes declared, "Common law was treasured as part of our

birthright and inheritance and the Congress of the Colonies in 1774 asserted it was a branch of the indubitable rights and liberties to which the respective colonies are entitled."

There is something rather splendid, I think about this cause of dispute. It has, at any rate, no mercenary elements and it is fine to think that, in the middle of the revolution, civil war, rebellion, war of independence—call it what you will—one of the things that your ancestors most treasured, yours and mine, was the inheritance of the English law which they were determined to maintain. For there is this strange quality about the English people in particular: although they often follow the most radical and revolutionary purposes and take the most new designs, they are never prepared to put them forward as something novel. Great reformers and even agitators have declared not that they were altering the system, but that they were restoring it to what it was before, or anyway should have been. In the struggles between Church and King and the long struggles between nobility and Crown that marked the period of the Middle Ages, the struggles between King and Parliament, and your struggle for independence, all the great actors drew on the past for the sake of the future. To use another phrase of Chief Justice Hughes, they were "revolutionists in the interests of ordered liberty".

At the same time, while our Anglo-American relationships always referred to the precedents of the past to justify the progress of the present, we have in both our countries maintained great flexibility when we required it.

Ladies and gentlemen, I know that your hosts here in London feel honored to have as their guests such distinguished representatives of their profession in your country, including the Chief Justice of the United States and the Attorney General. I know that during your stay with us, you will be discussing many problems with your colleagues here. The modern world with all its complexities is full of problems for lawyers to solve. You will have seen, in the field of administrative law, a report of a Government Committee that has just been published here, on administrative tribunals and inquiries, and I am told that you are reading it and discussing it with great avidity indeed, that the Stationery Office has at last succeeded in publishing something of a best-seller. It is a very interesting report because it deals with the deepest problems and questions, the roots of which go very deep, but which affect administration in all its forms today. There is, I think, nothing static about the common law. It is full of movement and contains the capacity to develop.

While you are here you are, I think, bound to reflect upon the past, but when you tell your friends and colleagues what you saw of Britain, I hope you will not dwell too long altogether upon our past. Think of the present and the future too. Do not remember this country as a land of age-old ceremonies and ancient buildings. It is that, of course, but do not think of us as a period piece. We are proud of our past, but we are proud, too, of the progress of our advance into the future. It is not only in the field of law that we can claim to be pioneers, but in the fields of industry, commerce and science. This country produced the first steam locomotive, of course designed by a Scotsman. We also led the world in the harnessing of nuclear power for commercial purposes. We have—and I wish you could go and look at it—in Calder Hall the first atomic power station in the world, the first in a program which, in time, will revolutionize our system of power generation. It was a British scientist who dicovered penicillin, a drug to which so many people throughout the world owe their life and health. I wish you could stay longer to see some of the things we are trying to do here: how we are trying to maintain and improve the standard of craftsmanship which has always been our pride. Many of your countrymen, I am happy to think, come very often—some come every year—to see us, and I want you to know how much we welcome them. When you go back, pray whet their appetites to come again.

Prime Minister Harold Macmillan

I said there is nothing static about the common law, and in no field is the capacity to develop from precedent to precedent greater than in the development of our political institutions. I wish you had been here a few weeks ago, for you would then have seen the working of a conference of Commonwealth Prime Ministers. The Commonwealth itself was developed partly by statute and partly by custom into its present form. The meeting of Prime Ministers has neither rules nor fixed procedure. It does not pass resolutions, or even reach precise decisions. Nevertheless, we have seen in recent years, both in the concept of the Commonwealth and the working of the Prime Ministers' Conference, prodigious progress. There are some people who may feel we are moving too fast, but to my mind it is absolutely essential that the growing nationalism of Asia and Africa, which a few years ago was but a ripple and is now become almost a tidal wave, should be canalised into broad and safe channels, for if it is

not, nationalism will turn to Communism.

There sat down with me in that old room the representatives of Canada, Australia, New Zealand, South Africa, India, Pakistan and Ceylon together with the Prime Minister of the Central African Federation. We welcomed a new member—Ghana. We hope, in a few weeks, to have another—Malaya. The territories of British descent will no longer hold their commanding position. They may not even be the majority of the members of this Commonwealth. But nevertheless, they all meet together, with different religions, races and colors, as partners and as equals. In the long history of the past, the world has seen the rise and fall of great empires, but I claim that Britain is the only power that has, of its own volition, set about the task of giving full independence to all parts of its empire, as they become able to manage their affairs.

I venture to repeat some words which I used a few days ago: this is not, in my view, the sunset; it is the coming of a new dawn.

When we compare what is happening in this field with what has been happening elsewhere, how foolish, how malevolent are the attacks upon our so-called colonialism. Since the war, Communist Russia has absorbed at least a hundred million people of Europe into their bloc, contrary to the wishes of the inhabitants. Since the war, Britain—imperialist Britain if you like—has given freedom and nationhood to at least five hundred million people in Asia and Africa. Turn to the last few months: four million people in Ghana have been made into a new and free nation. At that very time, the freedom of ten million Hungarians was being crushed by the Red Army.

When you go on Sunday next to Runnymede, I ask you to think, not merely of the formalism of legal thought or legal institutions which we and you share together, but of this as the fountain of the spring in this little island, from which have flowed, under providence, great rivers of law and liberty. These have spread and divided themselves into a great number of streams and have been fed by many tributaries, flowing through many countries and many centuries.

Our colonial policy sometimes in the past had more critics than admirers in the United States, and quite a lot of critics in our country too, and for different reasons. For example, King George III made himself very unpopular for a number of reasons, but I cannot resist recalling the issuing of a proclamation in 1763: "Whereas it is just, reasonable and essential to our interest and security of our colony that the several nations or tribes of Indians with whom we are connected, living under our protection should not be molested or disturbed", settlement should be confined to east of the Appalachians.

Well, I think now that more and more people are coming, at any rate, to understand our modern colonial policy, but we need your help and your sympathy, for we have great work still to do, and indeed, we have a common interest in this matter, for neither of our countries would like to see the former colonies of Africa and Southeast Asia jeopardize their new independence through yielding to the specious temptation of Communism.

I hope you do not feel that I have dwelt too long upon our achievements, but in this connection I must go on to tell you of our real lasting gratitude which we have for the generous help which has been given to this country by the United States through the difficult years of war, and post-war reconstruction. The real theme of my address is the alliance between our countries; that alliance is founded on a common political outlook on most of the problems of the modern world and a common foundation of law and justice. Of course, as Ambassador Whitney rightly said, we must not harp too much upon our full agreement. Sometimes there are differences; sometimes, apparent similarities conceal real differences. It was Oscar Wilde, I think, who said we had everything in common except our language. But I know well enough how much you have preserved many of our old seventeenth-century words which we have lost. I like to hear "gotten", we do not hear that here nowadays. A great deal of what many of my countrymen think is American is old English, preserved by you, the English of the Prayer Book and the Bible.

It is true, however, to say that, except for the great and ever developing partnership within the British Commonwealth, there are no partners in the whole history of international relationships who ever held together from the past such a tremendous working capital of ideals for the future; and it is both an advantage and a challenge to our two countries. Behind the Iron Curtain goes on in a mysterious way some form of evolution. The cold despotism of Stalin is having its face lifted. But we are still waiting for any concrete sign of any real change of heart. I have already referred to events in Hungary last autumn. There are still wide divergences of view between the Soviets and ourselves about the Middle East, the reunification of Germany, and the maintenance of security in Europe. Meanwhile, we in the free world must maintain our collective strength and play our part in the North Atlantic Treaty Organization, the Southeast Asia Treaty Organization and the Baghdad Pact. That is why, failing any satisfactory disarmament agreement, we must maintain together sufficient nuclear power to deter from aggression any country which threatens our liberties, and the great civilized institutions of which we are the safeguard.

Our possession of nuclear weapons, to which the Ambassador referred, places of course great responsibility upon our shoulders. Many people have strong views about the testing and manufacture of these weapons, and I recognize their deep concern and sincerity, for these are terrible forces which we

have brought into being. We are now seeking, in close co-operation with the Governments of the United States, France and Canada, to reach, at least as a first stage, a partial disarmament agreement which will allay some apprehension, without laying open the countries of the free world to the dangers of aggression and conventional war. In the maintenance of our defense structure, we have welcomed to our country many members of the United States Air Force and I am happy to tell you that the relations between your men, your boys and our civilian population have been very good and very happy. You want to know how good? I will tell you that marriages between United States servicemen and British girls take place at the rate of three thousand a year. That is what you might call the true spirit of mutual aid.

Yet even the best of friends have differences, and must have differences of view, from time to time. The great thing is that they should be able to discuss them frankly with each other. I count myself fortunate to hold my present office at a time when the Presidency of the United States is held by a man whom I learned to love and revere when I served with him in four years of war together.

At any rate, we have proved the strength of friendship between our nations and our ability to repair and renew it, if it is ever put under strain. What is it that lies behind this friendship? I have spoken of the great traditions, of the flow from these ancient charters of the common heritage of our law, but I think we have something more than that too. We have a common attitude to the application of the law. In both our countries, we take pride —justified pride—in the value we attach to the sanctity of the individual man and woman. This, of course, is summed up in the great words of the charter you know so well. One of the great problems of modern government is to judge the extent to which the state should interfere with the freedom of the individual to dispose of his affairs as he will, and I am bound to admit that the tendency of the state is to take more and more upon itself and from the citizens. But still, this strong thread of individual liberty runs right through the pattern of our history. In both our countries, the slightest infringement of a man's right to freedom of action, thought and speech is pursued rigorously. In our Parliament here, feeling never runs higher than when one man is thought to have suffered in his liberty, in however slight a degree. Great issues of policy, I have seen often in our Parliament—I am sure yours is the same—are laid upon one side, while some individual grievance is being ventilated, or dealt with. This liberty, which protects the individual against the state, protects our people from the domination of those who would enslave our bodies and our minds. This is what we mean when we speak of the free world.

It was well put by your Attorney General in his speech in Westminster Hall last Wednesday, a great speech. He spoke then of the search for a means to apply what we have learned of justice between men, to the affairs of nations. That, no doubt, is the next great test before us all. It is to the lawyers that we look to guard these principles of liberty. Through the centuries they have guarded it, they have sometimes had to fight for it. We know it is safe in their hands.

I have spoken of the political alliance between our countries, of its foundation in the habits and attitudes of their people. I hope, therefore, you will take back with you to the United States some memories of our common past. But I hope you will also take back with you the determination and inspiration for our future together. Much is spoken today of the value of what are called top level meetings between statesmen. They certainly have an important role to play. But I like to think of your Association of lawyers today as representing your clients; and your clients, Ladies and Gentlemen, are the people of the United States. Go back and tell them that, fortified by our common heritage from the past, our countries will face together the dangers of the present and share our hopes for the future.

The Magna Carta Memorial Ceremonies:

Runnymede, Sunday Afternoon, July 28

Impressive and never-to-be-forgotten were the ceremonies of the American Bar Association at Runnymede Sunday afternoon, July 28, for the dedication of its memorial to Magna Carta, the first great English landmark of freedom under law. Assembled on the historic meadow not far from Windsor Castle for this great occasion, harking back 742 years to King John's capitulation before the barons in 1215, were more than five thousand who had come from every state and territory, and the most distinguished lawyers, judges and statesmen of the United States and Great Britain.

Formal addresses were delivered by E. Smythe Gambrell, immediate Past President of the American Bar Association; the Right Honorable Lord Evershed, Master of the Rolls; Charles S. Rhyne, President-Elect of the American Bar Association; and the Right Honorable Sir Hartley Shawcross, Q. C., M. P., Chairman of the General Council of the Bar of England and Wales. Through television and radio and extensive press coverage, millions in all parts of the world were able to share in the inspiring rites.

Designed by Sir Edward Maufe, R. A., and financed by the voluntary contributions of approximately nine thousand American lawyers, the simple eight-columned rotunda stands on the ancient scene, opposite Magna Carta Island in the Thames. Its central pedestal, hexagonal columns and boldly incised frieze are of Portland stone. On the frieze is the inscription "Erected by the American Bar Association—To Commemorate Magna Carta—Symbol of Freedom Under Law". On one side of the central pedestal "Freedom Under Law" and on the reverse side "28 July 1957".

Mr. Gambrell

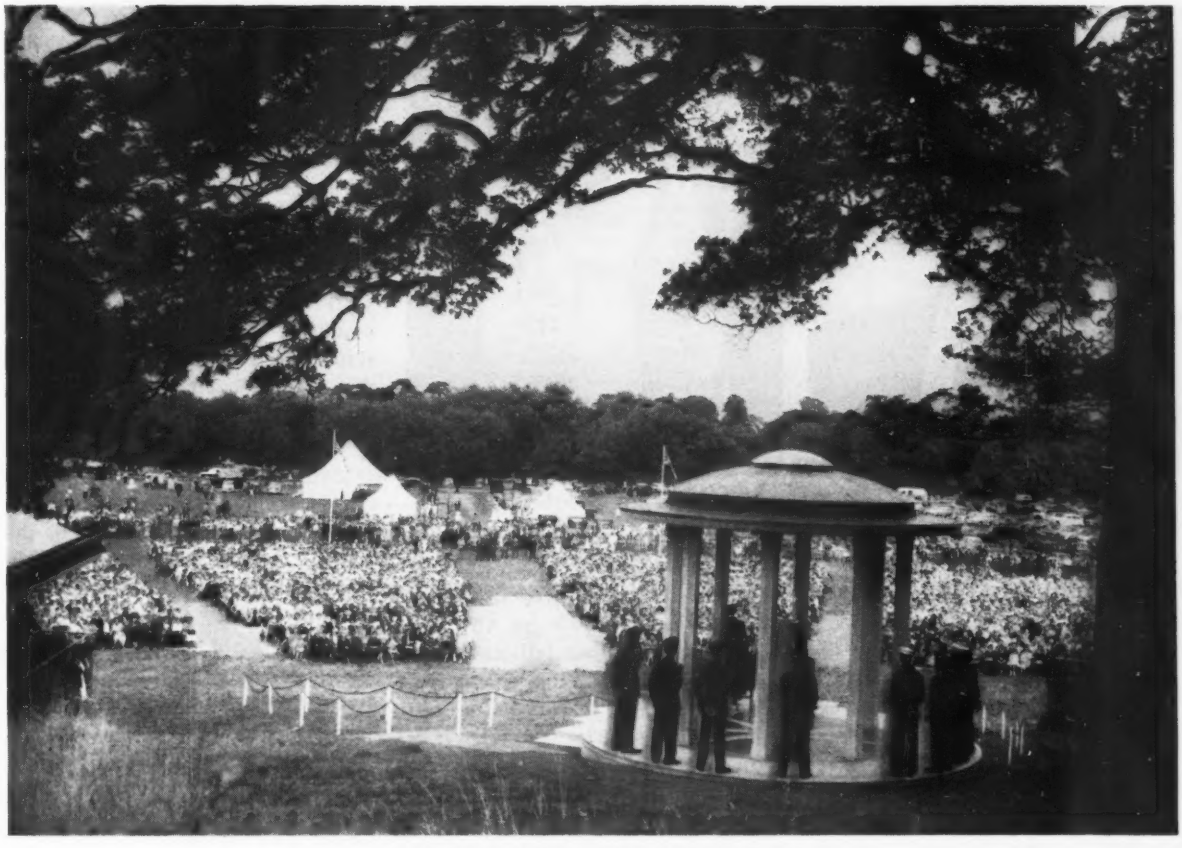
Proud and grateful peoples through the ages have raised monuments in memory of heroic deeds and the men who performed them. Amid the ruins in ancient Rome stands the Arch of Constantine, marking the victory of the first Christian emperor over Maxentius. Above the Champs-Elysées towers the Arc de Triomphe, commemorating the military achievements of Napoleon. On a stately monolith in the heart of London stands the majestic figure of Lord Nelson, the hero of Trafalgar.

We are gathered on hallowed ground to dedicate still another monument of commemoration. But this our temple will be consecrated not in martial glory. We are met rather to venerate an idea which found words and voice here seven and a half centuries ago. We have come in reverence and thanksgiving to do homage to the rule of law.

As we stand where once they stood—monarch and baron, cleric and knight—we sense again the bond that unites the dead, the living and those unborn in the eternal quest for freedom. This occasion reminds us that we are the passing instruments of a process which transcends our fleeting hour, and that our faith, like that of our fathers, can live after us.

The barons of this bold encampment proclaimed a belief of ancient origin, foreshadowed in the Stoic philosophy of the Greeks. It echoed the spirit of the Judaeo-Christian tradition, teaching that each man is a creature of divine will, worthy in his own right. Magna Carta brought this principle into the structures of government and opened the way for man's pursuit of his noblest aspirations. It fell to this place, in 1215, to reveal a new dimension in the eternal endeavor of men to live together in dignity and peace. By common consent, it is from that date that we measure our tradition of freedom under law. This meadow we mark as the birthplace of sovereign power administered within the limits of judicial process and according to the law of the land. Here it was written for all to read that justice will not be sold, denied or delayed, but granted as a matter of right. It is to the Great Charter that we ascribe the ideal that all men, whether of station high or humble, shall stand as equals before the bar of justice, and that no one shall be above the law.

The age-old parchment has lived through eras of constant change in the expanding life of an advancing people. It speaks across the ages to



Dedication of Memorial to Magna Carta

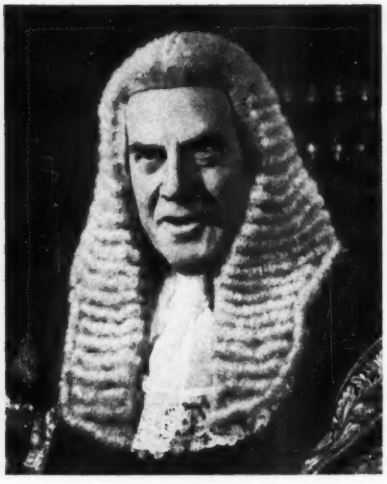
all who cherish liberty. Its hold upon the minds and hearts of each succeeding generation is not the less because its resounding words were addressed to the troubles of a particular time and place—to pressing problems of a day long since past. Its truths are universal and eternal, good for all men, for all time. From Magna Carta we have learned that great ends need small beginnings, and that only in the concrete forms of judicial process can freedom be preserved. It matters not that the determined men who camped here built better than they knew. What their work has come to be is the measure of its moment for today.

When Englishmen set out, three and one-half centuries ago, to find new homes beyond the Atlantic, they carried with them a cherished birthright. They sailed under a royal grant confirming to them the precious heritage of freedom. The charter for the Jamestown settlement, its rolling phrases in part the work of Lord Coke, concluded with a proclamation that they and their children would "have and enjoy all Liberties, Franchises and Immunities, to all Intents and Purposes, as if they had been abiding and born, within this our Realm of England". Transplanted to the virgin soil of a new world, the hardy principle of Magna Carta took root and flourished, to set the standard for future architects of government, to shape the soul of a new nation. The spirit of this place breathed in every American colony.

In the irony of circumstance, the colonists later took up arms against the Mother Country when aggrieved by the royal veto of the provisions of Magna Carta adopted by colonial legislatures. By their action, they reminded all mankind that Anglo-Saxons will govern themselves. It was fervent dedication to the ancestral law of England which moved the Americans to assert their independence. Their uncompromising devotion to the Great Charter and its principles brought about the separation in 1776. That same devotion, thanks to Divine Providence, now joins us, indivisibly, in a union of common ideals and objectives—a bond no transient feud or formal writ can put asunder.

In America, we exalted the fundamental tenets of Magna Carta by embodying them in a written Constitution, beyond the reach of simple majorities and above the ebb and flow of shifting currents of opinion. We sought in the written word a measure of certainty, and in the work of the courts a safeguard of stability. But we know that the life of our law is not preserved forever in a perfect crystal of polished phrase, and that the animating spirit must abide, at last, in the minds and hearts of men. The American Bill of Rights still wears the crest of Runnymede.

E. Smythe Gambrell



Lord Evershed

From the grudging concessions of King John, through the sacrifices of the colonial patriots in the revolution which set America on the course of its independent destiny, from Magna Carta until this very hour, generations of selfless men have fought for their faith in freedom and man's capacity to govern himself. In ever changing form and manifold guises, the forces of oppression confront each age anew. The fight for freedom is eternal. There is no final victory. Wherever tyranny or oppression exists, wherever there is ignorance, bigotry and persecution, men are learning to express their aspirations in the words of Magna Carta and to look to the English-speaking peoples to satisfy their yearnings for liberty under law.

There flows within our veins a common blood line, commingling Celt and Saxon, Dane and Norman, Pict and Scot. We share a tongue, and are enriched by a common culture. But the genius of our concord is something more. What was brought into being on this meadow holds us still together. From that seed we trace our brotherhood.

Today, the 250,000 lawyers of America, represented by the American Bar Association, have returned in devout pilgrimage to the ancestral home, to the wellsprings of our profession, to the fountainhead of our faith. Here, with pride and gladness, we have raised up a shrine. We have fashioned it of stone that came, like the ideals we venerate, from the land of our fathers—native stone that will gain lustre, mellowness and beauty through the ravages of the centuries. We offer it as a token of our allegiance to the rule of law and of our resolve that it shall endure. In this temple of timeless design for ageless principles, all mankind may worship. Fleeing to its altar, the humblest citizen is to find raised over him the shield and buckler of the law.

We are the keepers of the Citadel. For members of our calling, Magna Carta holds a rich and special meaning. It invested the legal profession with a mission above that of the ordinary occupations. By committing to law the protection of individual liberty it has reposed in the lawyers a sacred trust. Through the labors of Coke and Marshall, Blackstone and Story, Bracton and Kent, of countless lawyers and judges in both countries, Magna Carta has remained a living instrument, its vital force preserved. For each generation in turn its meaning again must be proclaimed.

Before this shrine, where all lawyers of our great tradition with equal right may stand with heads uncovered, we would focus the thoughts of the world on this peaceful place and invite all peoples to communion with the ideal that here found root and nurture. May no base instinct of meanness or recrimination obscure the vision of our common duty to mankind. The strife and bitterness of particular controversies are now forgotten. The shining symbol of Runnymede bespeaks the common cause, the unifying purpose of the Anglo-American people.

In this time of crisis, it is the privilege, the challenge and the responsibility of the lawyers of the common law to preserve, to proclaim and, over the vast expanses of the earth, to share, the blessings of our priceless inheritance. As the prophets and guides of society, let us act together for the sake of humanity. In the fellowship of free men that knows no limits of race or creed or land or time, let us be rededicated to the service that lies to our hands, mindful that those who defend liberty and justice anywhere defend it everywhere.

The Right Honorable Lord Evershed

You have, Mr. Smythe Gambrell, spoken of the monuments raised throughout the ages by proud and grateful people to commemorate heroic events and noble ideas. For every Englishman, particularly for every Englishman who is a member of our profession of law, today's is a proud and grateful occasion. We have become used by experience to the warm-hearted generosity which is characteristic of the American people and of which this presentation is yet another instance. But we do not forget that the American Bar, in making this gift to us, has also laid upon us a solemn charge. They have charged us that, as we look upon this Memorial to the Great Charter, we and you and all the peoples of the earth who prize freedom above material things do mutually pledge to each other our lives, our fortunes and our sacred honor for the support of the principles for which the Charter stands. In this harsh and anxious age there is in truth need that we should do so,

remembering that what the Roman historian said of his Empire is no less applicable to liberty: "It is preserved by the same methods which achieved it." And first among the methods must be firm faith and a no less firm resolve never to submit nor yield—in any degree and in any place—to that which we know in our hearts to be inconsistent with our faith.

So we have today in the words of your first President raised "here a standard to which the wise and honest can repair."

It is no doubt easy to point out that the articles of Magna Carta are now somewhat out of date, having little practical relation to the modern state; and even to question the strict historical justification of some aspects of what we say and do today. It seems to me that these sage iconoclasts sadly miss the point of the occasion, so movingly defined for us by the last speaker. They may too be usefully reminded of the significant and lively influence which the Charter has had and still has upon the development of the great country which is now the United States of America. You, Mr. Smythe Gambrell, recalled the terms of King James' first charter to the Virginian colonists 350 years ago. I am proud that as Master of the Rolls I have been able to send for exhibition to Jamestown, by consent of Her Majesty, the confirmation of Magna Carta by King Edward I in 1297, which came to the Public Record Office by gift of Her late Majesty Queen Victoria. It was in fact that confirmation which was first inscribed upon the Statute Roll of England.

The principles enshrined in Magna Carta were regarded as their birthright by the American colonists. These same principles, and in many cases the terms of the articles themselves, exercised a profound effect upon the constitutions of the states of the Union and also upon the Federal Constitution itself, notably the Fifth and Fourteenth Amendments. In the Revolution which cut—at the time—the political cord that tied the colonists to the United Kingdom, the colonists relied upon and asserted the rights which they so inherited, under the law, in common with Englishmen. What they repudiated was the power of the Parliament and Government of the United Kingdom to override those rights. So is it that the Great Charter, the progenitor and exemplar of later constitutional documents, justifies the conception that government involves a trust; and justifies also the view inherent in the Constitution of the United States that limitations may be placed not only upon the executive but also upon the legislative power. It has been said that the crowning achievement of the Supreme Court of the United States, that great Court, "independent of party, independent of power, independent of popularity", whose prestige is something won, not merely conferred, may be in having given—with the assistance, let us not forget, of the Bar—continuity of life and expression to the high ideals of the founders of the Union.

But still, for all of us, English and American alike, the true, the almost sacred value of the Great Charter lies not in the terms of its diverse sixty-three articles but in its implications. As Lord Bryce said on a somewhat similar occasion, its influence has been far deeper than that of a single constitutional document.

The emotions of the human breast, the stirrings of the spirit, have their part to play in ordering our affairs no less than reason, however godlike. Even if Magna Carta were to stand for the English-speaking world, for lovers of liberty everywhere, as no more than a picturesque symbol, it would be none the worse for that. On the other side of the Atlantic at the entrance to New York harbor stands the symbolic figure of Liberty. Upon a panel at the base of the statue—as all Englishmen know of course—are inscribed the lines:

> Send these, the homeless, tempest tossed, to me:
> I lift my lamp beside the golden door.

That was the promise to the world with which the American nation was born and to which she has kept faith. Now here at Runnymede has been raised a monument to our common heritage of the rule of law and to the proposition that:

> We must be free who speak the tongue
> That Shakespeare spake; the faith and morals hold
> That Milton held.

For, as I suggest, the two characteristics of our English law which have given to it perseverance and a title to fame, and even supremacy, are, first, that being essentially practical, it is part of our way of life itself; and, second, that it recognizes and reflects, in some degree at least, the moral law as well. It is essentially practical because, as Chief Justice Warren lately observed at Westminster, its principles, never finally expounded, still less dictated, emerge from what Benjamin Cardozo called the laboratory tests of individual cases in the courts. In this respect Magna Carta, giving specific answers to specific questions is the pattern and supreme example. If, as I believe, it has been borne upon its way by the support of the juryman and the ordinary citizen, it is because it has invited and acknowledged as fundamental to the rule of law a moral obligation upon all men, both high and low, to obey it. I cannot do better than recite to you the language used of Magna Carta by Lord Simonds, former Lord High Chancellor of England: "It is the very symbol of liberty. But no high-sounding declaration of principle will here be found. In more than sixty articles it provides specific remedies for specific evils. No clarion call; yet in the sum of it freedom was born."

Sir, you and your colleagues will know that there has been lately formed a new Magna Carta Trust, having as its principal objects the perpetuation of the principles of Magna Carta and the preservation of sites associated therewith. The monument which the American Bar has presented to my country and the land upon which it stands will be vested in the Trust. You will, however, allow me briefly to acknowledge and record, as is due, the debt which we also owe to the older Magna

Carta Society. Without the generosity and foresight of some of those associated with the old Society the present occasion in this setting could not have taken place.

According to the late Mr. Jerome K. Jerome, the morning of June 15, 1215, was sunny, soft and still. Today is more typical of English summer weather, being not particularly sunny, or soft, or still. We may, however, indulge again the fancy of the Three Men in a Boat even without the experience of scrambled eggs for breakfast prepared by one of them. We may in imagination see and hear again the climax of the fateful proceedings of that historic day:

> And King John has stepped upon the shore and we wait in breathless silence till a great shout cleaves the air and the cornerstone in England's temple of liberty has, now we know, been firmly laid.

Perhaps today, the twenty-eighth day of July, 1957, another great shout will cleave the air and salute the generous inspiration of the American people upon whose shoulders now rest the burden and responsibility of the leadership, under God, of the free peoples of the earth.

> Sail—sail thy best, ship of Democracy!
> Of value is thy freight—'tis not the Present only,
> The Past is also stored in thee.

Mr. Rhyne

We meet at Runnymede representing the legal profession of two great nations to commemorate one of legal history's most momentous events, the sealing of the Magna Carta in 1215.

Much of the language of Magna Carta seems curious to us today and alien to the twentieth century. But some of its words still move and inspire us. Men still rely upon the Great Charter's solemn promise that "to no one will we sell, to no one will we refuse or delay, right or justice" and that powerful provision that no freeman is to be proceeded against except by "the law of the land". These words are revered and cherished by the people of the United States as well as by the people of the British Commonwealth. For both of us they are the taproot of our way of life. Thus, the Constitution of the United States assures every citizen that the Government cannot deprive him of his life, liberty, or property except by "due process of law". Our Supreme Court has declared that the words "due process of law" are equivalent to the words "law of the land" in the Magna Carta.

As Lord Evershed has emphasized, Magna Carta has been more important in the broad sweep of history for its implications than for its specific provisions. When King John sealed Magna Carta he assented to a principle which is basic to the constitution of every state in which men are free—the principle that the law, and not the state, is supreme, that every man has natural rights even as against the King. The struggle to establish the rule of law did not begin at Runnymede, nor was it ended here. Tyranny did not disappear with the sealing of the Magna Carta; indeed it has not disappeared yet. But Runnymede was a turning point; it established a precedent which the English people were never to forget and which tyrants were to forget at their peril. "Magna Carta," Lord Coke was to declare in the seventeenth century, "is such a fellow that he will have no sovereign."

This monument to our joint heritage of freedom under law is a gift from the entire American legal profession. A solid cross-section of all American lawyers—heirs in common to the blessings of freedom and democracy—participated in this timely enterprise. It is most fitting that we make such a presentation, since the Great Charter embodies the first effective written statement of that concept of individual liberty under law which is basic to Anglo-American jurisprudence.

Magna Carta was sealed 392 years before three small vessels put 104 souls ashore at Jamestown to break ground for the first permanent English settlement in what is now the United States. Yet the Great Charter is an important part of American history. We know that the framers of our Constitutions, both Federal and State, did not originate any of the major restraints and limitations upon the three cardinal branches of our governments, nor the basic guaranties of civil liberties and individual rights contained therein. These we owe, rather, to the gradual development, in England, of principles which can be traced back to the Great Charter sealed here at Runnymede.

Mere mention of Magna Carta stirs the Anglo-American pulse like a battle cry against oppression and tyranny. From generation to generation its pledges of liberties and rights, constantly repeated, have been a powerful force in the formation of national character. From it, more than from any other single source, we draw our shared tradition of fundamental and inalienable rights and liberties common to all men. Those thousands of American lawyers who have contributed to this memorial did so in the realization that every American citizen would be less than he is but for the privileges of Magna Carta.

The world today is at a crucial point in the struggle between freedom and tyranny. On the one side are those who stand in the tradition of Magna Carta and defend the right of men to be free. On the other side stand the forces of darkness, who would deny freedom and exalt the state. This monument dramatizes the fundamental difference between our system of government, with its recognition of individual rights, and the Communist system, which denies such rights. This is the basic difference between Communism and the free world: we hold to the principle of individual human freedom under the rule of law as the inherent right of every man, while Communism rejects that concept and would destroy it.

Wherever Communism prevails, the very existence of freedom under law is aggressively denied. All life, all

government, all law, and whatever justice there may be, is subordinated to the concept of a supreme state, vested with all power, to which every individual owes complete obedience, and against which no person may lay a demand or raise a defense based on any asserted right not granted by the all-powerful State.

There are men today who profess to see no great difference between Communist and anti-Communist regimes. They do not perceive what this monument represents and what Communism stands for. That difference is measured by the phrase: Freedom under law.

What do we mean by freedom under law? We mean a great deal more, surely, than mere obedience to written laws. We mean acknowledgement of the fact that there are moral limitations on civil power. We mean that human beings have rights, *as human beings,* which are superior to what may be thought to be the rights of the state or of society. This is the truth which all men of good will must some day see. It is the truth exemplified in the Magna Carta and in the American Declaration of Independence and Bill of Rights. This is the truth to which we must cling, the truth we must never permit to become trite with dull repetition, the truth we must proclaim and proclaim again and again until it echoes and re-echoes not only in that half of the world which is free, but also in that half of the world which is enslaved. This is the truth which is the crux of our heritage of freedom, which has made mighty nations of both Britain and America, the truth which is at once the sword and the shield of the Free World in its battle against the alien tyranny of Communism.

Freedom can be won only in struggle; and once won, no matter how ably recorded in writing for posterity, it can never be assured to any new generation not willing to fight for it. When freedom becomes ingrained in the civilization of a people, when they understand it, cherish it, and guard it, when their institutions bespeak it and their daily lives are guided by it, when they love it more than life and covet it not merely for themselves but for each other, then only is it truly theirs.

Charles S. Rhyne

Baron Sir Hartley Shawcross

Mere love of country will not suffice without understanding devotion to its true ideals. Compromise between what we know is good and what we know is wholly evil can produce no good. Each generation that would pass on to its children the heritage of freedom must be honestly and intelligently ready to live or to die for human liberty. It must count no personal ambition, no private gain, no popular cause or national slogan for a single instant more important than the freedom of man.

We honor here an idea; not the idea of a man, but the idea of a people, and an idea *for* all people; the idea of a permanent law of the land preserving and safeguarding the fundamental rights and liberties of every individual.

We Americans thank God and England for the origin and development of that body of law and those principles of government which were the foundation and have been the inspiration of America's legal system and of the great basic guaranties of individual liberty and self-determination which underlie our constitutional structure.

It is in the spirit of perpetual union with you to serve and preserve the ideal of Magna Carta that American lawyers offer this monument as a token of reverence for our joint heritage of freedom under law. It is our earnest desire that this dedication ceremony may be seen and understood throughout the whole world as encompassing not merely the dedication of a monument but also the re-dedication of the people of two great nations to the principles which have made and kept them free. Then will this monument stand forever as a symbolic beacon to summon all enslaved peoples toward the freedom that can be theirs. The ultimate goal of all people in all nations must be peace in freedom under the rule of law, which means a peace embodying the principles of the Great Charter we honor here today. May God grant us the wisdom and leadership to move steadily toward this goal with all possible speed.

This simple monument of Portland stone was designed by Sir Edward Maufe, one of England's most renowned architects, to harmonize with the natural beauty of this setting. We are most pleased and gratified with his beautiful creation, which we are assured will last for more than 1,000 years. As Chairman of the America Bar Association's Committee To Commemorate Magna Carta, on behalf of the people of America, acting through our legal profession, I hereby present this

monument to you who represent the people of England, its legal profession and the people of the great British Commonwealth of Nations. In doing so we dedicate this monument to our joint heritage of individual freedom under law, and we call upon the legal professions of Britain and America to dedicate themselves to the task of extending this heritage to all mankind throughout the world so that peace under the rule of law will prevail forever.

Sir Hartley Shawcross

Mr. President, Your Excellencies, My Lords, Chief Justices, Ladies and Gentlemen, as Chairman of the Bar Council, and on this occasion as representing both branches of our legal profession in this country, I thank you of the American Bar Association for presenting this beautiful, yet simple, memorial to the Great Charter which was sealed here over 700 years ago, and which is now regarded all over the world as one of the landmarks in man's march towards liberty and justice.

We are grateful for the spirit which led you at this time to wish to express here in tangible form your belief in the things which you and we have inherited together. But, Mr. President, I know little and shall say less about King John. He was supposed to be overfond of lampreys, and, according to that great historian, Sir Arthur Bryant, he was a singularly clean man; he had eight baths in the course of six months! Whether that included the occasion when he fell into The Wash is not recorded. But I shall say no more about King John and the barons, and what they did or did not achieve in this place all those hundreds of years ago.

The significance of Magna Carta now lies not in what it achieved for the barons, but what it has come to mean in the minds of men today. In the minds of men today it has come to stand for the freedom of the individual to ensure that the little man receives equal justice with his neighbor under the law and protection against the all-powerful State.

We have spoken much about our great past. Let us think also about our great future. We here made no contribution to the past, but we collectively may have some influence on the course of future events, not only as lawyers, but also as citizens. For this is not for the law alone. Laws cannot in themselves create the high values of liberty and justice in which we here believe. The creation of these things is in the spirit they spring from, the character of a people. It is because we, all of us, first as citizens, second as lawyers, own a passion for liberty and justice that we are here today. The best way to commemorate Magna Carta is to look to the future and to see to it that that of which the Charter has become a symbol is protected and promoted in the world in which we live. Indeed, in the immortal words of Abraham Lincoln in the Gettysburg Speech, "It is for us, the living, to be dedicated here to the unfinished work", and the pursuit of liberty and justice, the promotion of the rights of man, is indeed an unfinished work. All over the world freedom and the rule of law are threatened. In vast areas, for many hundreds of millions of our fellow men, they do not exist at all. Tyranny and oppression prevail in their place. Even in our own countries our achievement is somewhat less than our ideal. Sometimes the activities of even popularly elected legislatures infringe on liberty. The tyranny of the majority is still tyranny. Not always do we remember the great words of the Declaration of Independence that all men are created equal, endowed by their Maker with certain inalienable rights. Not always do we realize that power corrupts; not always do we prevent the excesses of bureaucracy. As the modern state becomes more complex and the interventions of government more frequent, considerations of easier administration or more expeditious governmental action are too frequently allowed to override the judicial assessment of private rights. We should do well to remember the famous final words of John Stuart Mill's Essay on Liberty; I quote them: "A State which dwarfs its men in order that they may be more docile instruments in its hands, even for beneficial purposes, will find that with small men no great thing can really be accomplished, and that the perfection of machinery to which it has sacrificed everything will in the end avail it nothing for want of the vital part which, in order that the machine might work more smoothly, it has preferred to crush."

I agree with Mr. Rhyne that the most obvious danger to a free way of life is the spread of international Communism. In this country all the political parties are united in their implacable opposition to Communism. It is not for us to contemplate, nor do we, bringing freedom to the rest of the world by force. Other less happier lands must work out their own salvation for themselves, and be sure they will. What recently happened in Hungary is a demonstration of the fact that, however long suppressed, man's instinct for freedom will in the end be reasserted. The popular movement in Hungary may, for a time, have been subdued by the ruthless measures that have been taken. For a time the forces of totalitarian authority will continue to repress the latent urge for freedom elsewhere. But, however, great and powerful, brutal and merciless, the totalitarian state may be, in the end the individual will transcend the state. His rights are of the spirit, and they will prevail.

How best can we help? How can we push forward with "the unfinished work"? It is for us in our two countries, working in close association and community together, to be strong and eternally vigilant in protecting our liberties from external attack or from internal erosion. We must show by our example to the rest of the world what freedom under the law really is. So will the light of liberty and justice best penetrate into the dark lands at present curtained away from us. We must show them, and we will.

Let us look forward rather than backward. The qualities of our two

countries are complementary. I do not talk now of our common ancestry, our common language, our common law, important as all these things are; I think rather of the great vitality of the American people, their invigorating enthusiasm for great ideals and causes, their wealth, and at the same time their immense generosity, their power and their fundamental good will.

In Britain we no longer have the great wealth and material power we once possessed, but that does not mean that we have nothing. I think of my country people, the British, with an abiding faith in the fundamental freedoms, with a certain stability, with a certain spirit of tolerance for the views—however disliked—of others, which is not, as some think, a lazy or easy-going indifference but is a brave reflection of our own insistence on the liberty to say what we think. Our country, with its long experience in the development of democratic government and of free and independent justice, not only here but among the far-off peoples whom we have led or are leading forward to freedom, has a great contribution still to make. Together the United States of America and the British Commonwealth can lead and protect the peoples of the world by our influence and our example. But divided we shall emperil those things for which we stand—life, liberty and the pursuit of happiness.

I know that sometimes we have our disagreements, sometimes one or other of us pursues a mistaken course. The wisdom of neither of our countries, still less of our politicians, is infallible. But the very shock and pain which these misunderstandings cause underline the identity of our common ideals. Let us then remember this great and significant occasion as one which marks our determination to strive mightily together in every field of physical and legal and social endeavor, to make the brave words of Magna Carta a reality, not for ourselves alone, but for all mankind, so that liberty and justice shall not perish from the earth.

Mr. President, in 1215 there grew here a great English oak. It was cut down some little while ago, and a small plaque was made by the Egham and Thorpe Royal Agricultural and Horticultural Association. Sir Howard Roberts, the President—who was too young in 1215 to remember the actual existence of the oak at that time, but who has assured himself of the fact that it did then exist—will now present that small plaque as the symbol of this occasion to the President of the American Bar Association.

Sir Howard Roberts

Mr. President, Your Excellencies, My Lords, ladies and gentlemen, I have the honor to ask you to accept a small memento of this historic occasion. May I just read the scroll which accompanies it?

> This shield of English oak grown in the neighboring Forest of Windsor in the year 1200 was presented by the Egham and Thorpe Royal Agricultural and Horticultural Association in their Centenary Year to the American Bar Association on Sunday, 28th day of July, 1957, at the Memorial Ceremony on Runnymede to commemorate the signing of Magna Carta by King John on June 15, 1215.

President Maxwell

President Roberts, it is with profound gratitude that I accept this shield on behalf of the American Bar Association. It shall ever serve to remind us of your warm friendship for our people, which has made this ceremony possible.

Now, if you will all rise, as President of the American Bar Association, representing a quarter of a million lawyers in the United States, I have the great honor to unveil this beautiful monument to commemorate Magna Carta, the symbol of freedom under law.

The Queen's Garden Party

The most coveted invitation issued in London was imprinted with a small gold crown, under it in gold letters EIIR, and below in script: "The Lord Chamberlain is commanded by Her Majesty to invite [name of guest] to an Afternoon Reception in the Garden of Buckingham Palace on Monday 29th July 1957, from 3.30 to 5.30 o'clock p.m. (Weather Permitting). Morning Dress or Lounge Suit."

The weather permitted, even cooperated. Guests entered through a gate guarded by a soldier resplendent in scarlet tunic, passed through a portion of the lower floor of the Palace and out into the Gardens, which comprise several acres. A long tea tent had been placed to the left of the Gardens. Further down a band played music with an American flavor—Cole Porter and selections from "The King and I". Far down in the Garden was the marquee where the Royal Family and distinguished guests had their refreshments. We quote from William Hickey writing in the London *Daily Express:*

"I wondered what it would be like when 5,000 Americans went to a garden party at Buckingham Pallace. . . . The occasion was, for them, the climax of the visit of the American Bar Association.

"I smiled. Once or twice I was embarrassed. Once or twice I found myself thinking about the fundamental attraction of monarchy. And most of the time I was deeply moved.

"At an ordinary Palace garden party the guests move around, talk to each other . . . . An attempt is made to try to forget that the Queen is there. It would be bad form to stand around too much.

"But the 5,000 Americans stood there almost in silence—waiting . . . waiting . . . waiting.

"The royal party appeared. A courtier waved a piece of paper. The Guards band—red coats just like those hated red coats of the time of George III that are remembered in the United States—stood and played the National Anthem.

"The Queen was very smart. A black dust-coat, a white dress and a white flowered hat. Prince Philip was in a black morning coat, not his preferred grey. The Queen Mother was in a dress of champagne lace. . . .

"The curiosity, the admiration, the instantaneous affection was something I have never seen before.

"Normally at these garden parties, the tea tents, which are opened when the royal party has arrived, are full of the hungry English seizing tea and cake.

P. A. Reuter Photos Ltd.

Queen Elizabeth and Prince Philip at the Garden Party

"Yesterday they were empty. In spite of the fact that the Queen, with the co-operation of Lyons, who do the catering, had provided miniature hamburgers and hot dogs for her guests.

"It didn't matter who you talked to. The enthusiasm was from the heart. For an Englishman it had something incredible about it."

After a few of the guests had been presented to the Queen and Prince Philip on the veranda of the Palace, the royal family moved into the Gardens and walked separately toward the royal tea marquee surrounded by their guests, Queen Elizabeth on the right, the Queen Mother in the center and Prince Philip on the left, each of them stopping to greet and chat with many of their guests as they proceeded.

The Americans were impressed by the graciousness and democracy of the royal family. It was easy to understand why the British love their Queen, whose beauty and petiteness are not fully shown by the camera. The ladies agreed that Prince Philip is as handsome as he is reported to be, and the Queen Mother's gracious warmth won all hearts.

"It was the most successful Palace garden party I have ever attended", concluded Mr. Hickey, in the *Daily Express*.

For the American guests, it was a never-to-be-forgotten experience.

Thirty-three Years Earlier: Another Garden Party at Buckingham Palace

There have been many changes in the world during the third of a century since the last visit of the American Bar Association to London in 1924. We thought that our readers would be interested in an account of the garden party given by King George V at Buckingham Palace in 1924 when Charles Evans Hughes was President of the Association. The following description of that garden party a generation ago was published in the *London Times* of July 25, 1924, and reprinted in the August, 1924, issue of the JOURNAL (10 A.B.A.J. 560-561):

"A special interest may be said to have attached to their Majesties' afternoon party yesterday at Buckingham Palace, as the majority of the guests were the members of the American Bar Association and their ladies now on a visit to this country. There was, in consequence, a frank and perfectly natural curiosity among a number of the visitors as to the atmosphere and procedure of a Royal garden party; and many, to their surprise, found that the function was very like an official party at Washington.

"Their Majesties came out on the wide lawns where the many guests were assembled, separated, and made a leisurely progress across the grass in the direction of the handsome red and gold awning which marked the rallying point for the immediate guests of Royalty. But they stopped and spoke to scores of people on the way with an almost complete absence of ceremony. The King walked with Mr. Charles Hughes (president of the American Bar Association) and Mr. R. B. Bennett (vice-president of the Canadian Bar Association), and personally greeted many whom he recognized in the crowds which surrounded him.

"The Queen, similarly accompanied by representative members of the American and Canadian Bar, found others of the guests lining her path across the lawns, and by the time their Majesties had reached the

Some of the guests at the 1924 Garden Party at Buckingham Palace

marquee, where gold plate gleamed among the teacups, there was not a single visitor who did not feel that there was nothing in the spirit of the Royal Household which could ever make less easy that underlying unity of the English-speaking peoples which has been so rightly stressed throughout the visit. The Prince of Wales had his own little court as he, too, made his way over to the marquee, and so interested were the visitors that many forgot entirely the long marquee at one side of the lawn waiting to minister to their material needs.

"The King was the first to arrive at the Royal enclosure, where he waited for the Queen, who was accompanied by Mrs. Hughes and one of the ladies-in-waiting. The Duke of Connaught, Prince and Princess Arthur of Connaught, and Princess Beatrice later joined them. The Queen wore a lavender-colored costume with a small hat of the same shade, and carried round her shoulders a white cloak, trimmed with fur, for, at the moment of the Royal entry to the gardens, the weather had been far from propitious. A heavy shower sent most of the guests to the marquees, but just as the strains of the National Anthem announced the appearance of their Majesties, the skies cleared, and although once again a little rain fell, on the whole the afternoon was entirely pleasant, especially as the sun shone generously most of the time. . . .

"Opportunity was made for their Majesties to meet personally representatives of the various Provinces of Canada and of the individual States of America, and the democratic character of the function was never more exemplified than when the time came for the King and Queen, with the Prince of Wales, and their suite to retire. A lane of the guests immediately formed, and, with complete absence of ceremony, the Royal party smilingly accepted a mild form of the handshaking that is such a feature of American Presidential life as they slowly passed through the lane of appreciative guests on their way back to the Palace."

P. A. Reuter Photos Ltd.

The Queen Mother talking to some of the American guests at the Garden Party at Buckingham Palace. Other members of the Royal Family present at the Garden Party, in addition to the Queen and Prince Philip, were the Duchess of Kent and the Princess Royal.

The Law Society's Dinner

At Guildhall in London, July 31

The 1957 Annual Meeting came to a close with the great dinner at London Guildhall, given by the Law Society to the two hundred members of the House of Delegates of the American Bar Association and their spouses. Of the many high points of the London half of the meeting, magnificently and faultlessly arranged by the lawyers of Great Britain (barristers and solicitors both), the Guildhall dinner, by common consent of those present, was, from a professional point of view, the supreme climax of the London meeting.

Just to enter this great vaulted, cathedral-like Guildhall, completed in 1440, partially destroyed by war in 1940, but now fully restored, was itself a memorable experience. Here, every year, the Lord Mayor of London and the Sheriffs are elected and here stirring scenes are enacted "when national and international leaders, heroes and patriots are honored, and when London, humbly representing the whole British people, thanks in its own expressive way those who serve their country well".

To have dinner in that incomparable setting with 600 people, including the leaders of the Bench and Bar of Great Britain and of our own country, in the presence of the greatest statesman of the twentieth century, who, though showing the toll and strain of years, honored us by his coming, together with his lifelong companion, Lady Churchill, was an event without equal in the history of the American Bar.

After the main group was in place in the great hall, the distinguished guests were announced and moved to their seats at the head table, led by Sir Winston and Lady Churchill. The whole assemblage was in formal dress, our gracious hosts colorful with their ribbons and decorations, and the ladies beautifully gowned for the occasion.

When everyone was at his chair, the two national anthems were played by the Orchestra of the Coldstream Guards. Then, prior to the seating, a beautiful grace was sung by an invisible choir, the Abbey Quartette. Next followed a toast to the Queen and the President of the United States. Then came a seven-course dinner (a separate wine with each course) that would have provoked the enthusiasm of the most particular gourmet of Victorian times.

Everyone sated, the speaking began.

First, a toast to the Lord Mayor and Corporation of London by Sir Leonard Holmes, LL.M., J.P., met with a response by the Rt. Hon. The Lord Mayor, Col. Sir Cullum Welch, O.B.E., M.C.

Then, the high point of that unforgettable evening, the toast to "The Legal Profession" by the Rt. Hon. Sir Winston Churchill, K. G., O.M., C.H., D.L., M.P. There was a considerable pause after he was presented. Lady Churchill was whispering in his ear. After a long minute, the old lion slowly rose, briefly consulted his notes almost for the last time, and then launched into a brilliant fifteen-minute address that was often interrupted by round after

A. V. Swaebe

Sir Winston Churchill (seated) at the Guildhall Dinner. Standing (left to right) are the Lord High Chancellor, President Charles S. Rhyne, and Chief Justice Earl Warren.

Keystone Press Agency Ltd.

General scene at the Law Society's Dinner in Guildhall.

round of applause. If there had been rafters in that ancient hall they would have rung and shattered from the vibration.

The Chief Justice of the United States and the Lord High Chancellor of Great Britain followed with memorable responses.

The dinner concluded with a toast to the American Bar Association by the President of the Law Society, Ian D. Yeaman, and a response by the new President of the American Bar Association, Charles S. Rhyne, who voiced the gratitude of every American present for the unforgettable hospitality and heart-warming friendship of our British brethren on this second and most memorable pilgrimage of the American Bar to the country whence we derive the common law, the tradition of Magna Charta and the heritage of freedom under law administered by an independent judiciary —the one sure test of the difference between merely professing human freedom and guaranteeing its existence.

Sir Leonard Holmes

Mr. President, my Lord Mayor, my Lord Chancellor, Sir Winston, Chief Justice, Mr. Rhyne, my Lords, Sheriffs, Ladies and Gentlemen:

When The Law Society undertook to arrange a program of hospitality and entertainment for our very good friends, the American Bar Association, the first thing which came to our minds was that we should end the program with a function of this kind in Guildhall. We did that for two reasons: firstly, because the Guildhall has always been closely associated with the administration of justice in the City of London, and the various landmarks in the history of The Law Society have been accompanied by celebrations within these walls.

My mind goes back to 1925 when we celebrated our centenary in this Hall with a banquet at which His late Majesty, in his then rank of Duke of York, was the chief speaker and guest. Then again in 1950, when we had the meeting of the International Bar Association in London—at that time I had the honor to be Joint President—we had a banquet in this Hall to finish the proceedings of the Conference. More recently, in 1955, we had a very successful Commonwealth and Empire Lawyers' Conference here, and again we finished with the same procedure in this Hall. Therefore it seemed absolutely fitting that when our American friends came to hold their conference here we should try and treat them in the same way.

Our second reason, of course, was that we know from experience the great interest which all our American friends take in our antiquities and ancient monuments in this city and we felt that they beyond anyone would appreciate dining within these walls with their historical associations.

Those being our ideas, you may imagine our dismay and disappointment when we learned that, owing to intended structural alterations in the kitchen arrangements of the building, no public dinners would be held in this Hall during the year.

It was then, my Lord Mayor, that your good offices were sought: with your assistance and with the kindly help of Mr. Haywood, the Chief Commoner and Chairman of the City Lands Committee, and all the others who co-operated with you, the difficulties were overcome and we are able to be here tonight. Our grateful thanks are due to you and to all those who co-operated with you in making this possible. . . .

My Lord Mayor, this toast is associated with your name and I therefore ask leave to end on a personal note. You are a valued member of the Council of The Law Society. I well remember a day six years ago when, in my capacity as President, I called upon you at your office to inform you that the Council had decided that they would like to nominate you for membership of the Council and to ask you to allow your name to be put forward. I was greatly impressed with the reaction which I found: you gladly accepted, you at once sent for a partner and to managing clerks who were obviously old and valued servants and you told them the reason for my visit. The obvious pleasure and pride which they showed at what they considered was an honor being paid to you made me feel that we were acquiring a new member of the right calibre and the right setting and background. We have not been disappointed.

As I left your office and walked round the corner into Cannon Street, the chimes of St. Paul's were ringing out the hour of noon. I knew nothing at that time of your civic activities and I failed to realize that what they were trying to say to me was, "Turn again Cullum Welch, Lord Mayor of London".

Later in that year I met you again in places as far apart as Sydney and New York, when, in attendance on Sir Denys Lowson, as Sheriff you visited those cities on his formal civic visits. . . .

My last recollection of you is on that unique occasion in the history of The Law Society when, after your election as Lord Mayor, you attended in full regalia at the Council meeting of the Law Society and, with hat in hand, you humbly asked for leave of absence from our meetings during your year of office. That is, as I say, a unique occasion and I felt at the time that it was a measure of both your greatness and your humility.

All my English hearers will certainly have heard the old story of the bishop who, when visiting one of his parishes, took the opportunity of enquiring of the verger whether he thought the vicar or the curate were the better preacher. The verger said at once, "The curate." When asked why, he said, "Well, when the vicar says 'And lastly', he lasts, but when the curate says 'In conclusion', he concludes!"

May I endeavor to earn your gratitude by emulating the curate and saying, in conclusion will you rise and drink to the toast of "The Lord Mayor and Corporation of London".

Col. Sir Cullum Welch, The Lord Mayor

Mr. President, my Lord Chancellor, Sir Winston Churchill, Chief Justice, Mr. President Rhyne, my Lords, Sheriffs, Ladies and Gentlemen: On behalf of the Corporation of London, the Queen's Sheriffs of the City of London and on my own behalf, may I thank the senior Past President of The Law Society for the generous terms in which he has submitted this toast, and you, the whole company, for your enthusiastic and warmhearted reception which you have given to it. . . .

May I straightaway tell the senior Sheriffs? I regret to say that they are doomed by protocol throughout their entire year of office to listen to the Lord Mayor constantly replying on their behalf; they have been listening to me for some nine months, and if they are not sick of it they ought to be! However, they are very kind and loyal friends and follow me and pretend to be amused even if they are not. Now on behalf of the corporation, of which I have the honor to be the head this year, may I say how much the corporation, the ancient municipality of the City of London, whose beginnings are lost in the misty doings of more than a thousand years, appreciated the opportunity of entertaining some of our American visitors here in Guildhall last Friday and at the Mansion House this afternoon. It is, as I have already said in another place, a great compliment to this country that the American Bar Association are this year holding their Annual Meeting in London for the first time since 1924. It speaks wonders for the organizing agility of the American lawyer that what he commences to talk about in New York he is able, with apparently the greatest of ease, to adjourn for final pronouncement and determination in London. Of course we desk-bound English lawyers—and I was one of them until I took on this great office of Lord Mayor of London; now I am having a holiday from my profession, of course—have much to learn from our globe-trotting American cousins about the art of station speaking.

The Corporation of London is proud and happy, Mr. President, to have had the opportunity of contributing in some degree to the entertainment of our ever-welcome American visitors. I hope that here in Guildhall they may have caught something of the historic atmosphere of this ancient place, the environs of which, as your menu card rightly declares, Mr. President, have been dedicated to the art of civic government for more than a thousand years. These venerable walls have been the silent witnesses of many an event of triumph and rejoicing, sadness and sorrow, all of which have left their indelible mark on the pages of our long history. But tonight I recall especially the stirring incident of June 12, 1945, when in this place, in this hall and in pursuance of the unanimous will of the Court of Common Council, the Honorary Freedom of the City of London was conferred upon that doughty son of America,

General of the Army, Dwight David Eisenhower, then Supreme Commander of the Allied Expeditionary Forces and later destined to be the President of the United States. This act of gratitude to a great man was done not merely for London, but for all the people of this land and for a host of people beyond our shores, and right glad was the Corporation of London to do it.

May I mention that in the audience on that historic occasion was another Honorary Freeman of this City who tonight adds lustre to these proceedings by being at your table, Mr. President. I refer to the Right Honorable Sir Winston Churchill. I am delighted—and I know you all are—to know that Sir Winston is to address us in a few minutes. We shall listen eagerly to the voice which is as well known and—I say this advisedly—as well loved in the United States of America as it is here.

As a lawyer I appreciate very much, Mr. President, the invitation to be here in the heart of my own city this evening. But tomorrow morning, along with the Lady Mayoress, the Sheriffs and their ladies, the Chief Commoner and Mrs. Haywood, I sail in the *Queen Mary* for the New World. We shall visit the Jamestown Festival, the conference of Virginia lawyers at White Sulphur Springs, New Orleans and Philadelphia. Then my wife and I go over to our great Dominion of Canada for visits to many cities there, finally returning from Montreal by air on the first of September.

In six days from now, Ladies and Gentlemen, I shall be passing once again before that tall symbol of Liberty, the mighty woman with a torch whose flame is the imprisoned lightning and from whose beacon hand glows world-wide welcome as she lifts her lamp beside the golden door. We are all looking forward eagerly to our visit to the United States, and what happier augury could there be for the welcome which I know we shall all get over there than the welcome which you, Mr. President, the Council, my brother Members of the Council of The Law Society, together with all our American guests, have given the Sheriffs and myself here tonight. . . .

Sir Winston Churchill

Mr. President, my Lord Mayor, my Lord Chancellor, your Excellency, my Lords, Sheriffs, Ladies and Gentlemen, I am very glad that it has fallen to me to propose the Toast of The Legal Profession. I can do so without the slightest bias.

I am very glad indeed that I am also to welcome here the many illustrious American guests who have come from within and without the ranks of that profession. Several thousand members of the American Bar Association have come to our island for part of their Annual Meeting: I earnestly trust that our hospitality has been equal to the sentiments of pleasure with which we welcome them. That is a remarkable fact, and it is a compliment of which we are all deeply sensible. It illuminates a great truth, spoken, perhaps, at a time when it was particularly advantageous. A great truth, in the main law and equity stand in the forefront of the moral forces of our two countries, and they rank our common language in that store of bonds of unity on which I firmly believe our life and destiny depend.

If you are over 160,000,000 and we, with our Dominions gathered round us, are 70,000,000 or 80,000,000, and if we work together, there is no doubt that we shall together represent a factor in the development of the whole world which no one will have any cause to regret.

The alliances of former days were framed on physical strength, practically expressed, but the English-speaking unity can find its lasting coherence above all in those higher ties of intellect and spirit of which the law and language are a supreme expression.

Last week many of you visited Runnymede. There was the foundation on which you have placed a monument. It has often been pointed out that the Fifth and the Fourteenth Amendments of the American Constitution—the body which was concerned in framing it contained six members of the Inns of Court, I may remark—are an echo of the Magna Carta. Under the Fifth Amendment, no person shall be deprived of life, liberty or property without due process of law, and under the Fourteenth Amendment, no state shall deprive any person of life, liberty or property without the process of law, nor deny any person within the jurisdiction equal protection of the laws. National governments may indeed obtain sweeping emergency powers for the sake of protecting the community in times of war or other perils. These will temporarily curtail or suspend the freedom of ordinary men and women; but special powers must be granted by the elected representatives of these same people by Congress or by Parliament, as the case may be. They do not belong to the state or government as a right. Their exercise needs vigilant scrutiny and their grant may be swiftly withdrawn.

This terrible twentieth century which we have witnessed has exposed both our communities to grim experiments, and both have emerged restored, confident and guarded. I speak, of course, as a layman on legal subjects, but I believe that our differences are more apparent than real and that they are the result of geographical and other physical conditions rather than any true division of principle. An omnipotent Parliament and a small legal profession tightly bound by precedent are all very well in an island which has not been invaded for nearly 1000 years. Forty-eight states of the Union, each with fundamental rights and each with a different geographical situation, constitute a totally different proposition. Between Magna Carta and the formulation of the American Constitution, we in Britain can claim the authorship of

the whole growth of the English common law; and that, I think, will not be disputed. Our pioneers took it with them when they crossed the Atlantic Ocean. For many centuries in the Middle Ages, English lawyers would not admit that the law could be changed even by Parliament. It was something sacrosanct, inviolable, above human tampering, like right and wrong. This seems to have been the view of the English Chief Justice Coke. He, as early as the sixteenth century, unfolded his dream to this country of a supreme court, above the legislature, for Great Britain. This dream vanished in our Civil War; we have had some of that ourselves. The Supreme Court, however, survived and flourished in the United States. England was too compact and uniform a community to have need of it, but the Supreme Court in America has often been the guardian and upholder of American liberty before all the world. Long may it continue to thrive.

There are wider aspects to these considerations: justice knows no frontiers. Within our considerable communities, we have sought to regulate our affairs with equity. We have now reached the point where nations must contrive a system and practice to resolve their disputes and settle them peacefully. We have not so far succeeded in this. Some have tried at one swoop in the hour of victory to draw up an all-comprehending scheme to meet international possibilities, such as the Charter of the United Nations.

In a recent speech that most distinguished Australian statesman, Mr. Menzies—whom I hope you will meet—told us that justice was not being achieved in the Assembly. That is a serious charge, but it is true. I do not throw in my lot with those who say that Britain should leave the United Nations. However, it is certain that if the Assembly continues to take its decisions on grounds of enmity, opportunism, or merely jealousy or petulance, the whole structure may be brought to nothing. The shape of the United Nations has changed greatly from its original form and from the intention of its architects. The differences between the Great Powers have thrown responsibility increasingly on the Assembly. This has been vastly swollen by the addition of new nations. We wish all these nations well. Indeed we created many of them, and have done our best since to ensure their integrity and prosperity. But, it is anomalous that the vote or prejudice of any small country should affect events involving populations many times exceeding their numbers, and should affect them as self-advantage or momentary self-advantage may direct. This should be improved. There are many cases where the United Nations have failed. I do not wish to cast a gloom over your thoughts, but Hungary does creep across my mind. Justice cannot be a hit-or-miss system. We cannot be content with an arrangement where our new system of international laws applies only to those who show themselves willing to keep them. I do not want tonight to suggest an elaborate new Charter for the United Nations, but I think we can all agree that in its present conception its imperfections must be changed.

The mere creation of international organizations does not relieve us of our individual responsibilities, at least not until an international system has been created which is truly effective. It falls to the righteous man individually to do what he can and to form with his friends alliances which are manifestly crowned with justice and honor. Such are the North Atlantic Treaty and other combinations which the free world has made. Such I trust and believe is, in the main, the union of the English-speaking peoples.

I have the honor to propose to you the Toast of The Legal Profession which, in its far-reaching way, has steadily woven forward and upward all those principles which we have in mind and which I have ventured to touch upon tonight.

The Legal Profession, coupled with the names of the Chief Justice of the United States and the Lord High Chancellor of Great Britain.

Chief Justice Warren

Mr. President, my Lord Mayor, my Lord Chancellor, Sir Winston, my Lords, Sheriffs, Ladies and Gentlemen: You have completely spoiled all of us for future Annual Meetings. We are not accustomed to such rousing receptions at home. In America, where every business and professional organization large or small holds a national convention, not necessarily because it is essential but because it is the custom to do so, a convention is but a convention. There we meet, we parade through the business district at the most traffic-congested hour in order to have a captive audience, and to attract the press we discuss violently some controversial public question, we pass resolutions in thunderous tones, we recommend ourselves to the public most highly and then adjourn to see the sights by night. The next day we return home thoroughly exhausted and with barely the strength to make our deductions for income tax purposes.

If this ancient need of ours for conventions had existed in the time of Abraham Lincoln, I am sure, in speaking of them, he would have repeated and with great fervor, his classic phrase, "The world will little note nor long remember what we say here". However, I am sure, if he were here in London tonight he would complete his sentence, speaking of yourselves, by saying, " . . . but it will never forget what they did here". You have transformed what at best would have been a workshop conference into a great legal, cultural and spiritual experience for all of us. You have literally showered hospitality upon us. Everyone has done so from your gracious Queen, her First Minister and the Lord Chancellor, to little children we meet in your parks and your

(Continued on page 951)

AMERICAN BAR ASSOCIATION

Journal

TAPPAN GREGORY, *Editor-in-Chief* .....Chicago, Ill.
LOUISE CHILD, *Assistant to the Editor-in-Chief*....Chicago, Ill.

BOARD OF EDITORS

E. J. DIMOCK .....New York, N. Y.
ROBERT T. BARTON JR. .....Richmond, Va.
ALFRED J. SCHWEPPE .....Seattle, Wash.
GEORGE ROSSMAN .....Salem, Ore.
RICHARD BENTLEY .....Chicago, Ill.
EUGENE C. GERHART .....Binghamton, N. Y.
CHARLES S. RHYNE, *President of the Association* .....
.....Washington, D. C.
ROY E. WILLY .....Sioux Falls, S. Dak.
JAMES L. SHEPHERD, JR. *Chairman of the House of Delegates*
.....Houston, Tex.
HAROLD H. BREDELL, *Treasurer of the Association* .....
.....Indianapolis, Ind.

General Subscription price for non-members, $5 a year.
Students in Law Schools, $3 a year.
American Law Student Association members, $1.50 a year.
Single copy price, 75 cents; to members, 50 cents.

EDITORIAL OFFICES

1155 East 60th Street .....Chicago 37, Ill.

Signed Articles
As one object of the *American Bar Association Journal* is to afford a forum for the free expression of members of the Bar on matters of importance, and as the widest range of opinion is necessary in order that different aspects of such matters may be presented, the editors of the *Journal* assume no responsibility for the opinions or facts in signed articles, except to the extent of expressing the view, by the fact of publication, that the subject treated is one which merits attention.

Hands Across the Sea

During the early summer of 1957 the world watched with keen interest the re-enactment of the original voyage of the *Mayflower* on its westward journey from old Plymouth to another Plymouth in the New World. In July this year we witnessed a pilgrimage of American lawyers to England, the England from which the *Mayflower* came, and from which in 1607 the *Susan Constant*, the *Godspeed* and the *Discovery* brought the first English settlers to Virginia. This fall we are enjoying the visit of England's gracious Queen Elizabeth to the cradle of our American common law, Jamestown and Williamsburg. Sir Winston Churchill himself has captured the significance of these bonds of history, tradition and law in his latest literary venture, *The History of the English-Speaking Peoples*. These ties are symbols of the great heritage which has bound the English-speaking nations more firmly together in a world which looks to them as the hope of its future freedom.

Out of the mists of tradition and custom, out of the cauldron of English and American revolution, out of the fire of their civil wars and parliamentary debates, the English-speaking people have built up their common law. Under that law a man's home is his castle, his individual rights are protected, and all men are equal before the law. From our English forebears we Americans have inherited those institutions which characterize the common law the world over: trial by jury, the doctrine of the precedents or *stare decisis*, and the supremacy of the law—*sub deo et lege*. How fitting it was then that American lawyers should dedicate at Runnymede their new memorial to Magna Charta. Long may it remain as a tangible reminder to future generations of those ideals which underlie the laws of our two countries; ideals which, as Viscount Kilmuir pointed out in his eloquent address at Westminster Hall, "have outlasted many tyrannies".

As American Bar Association members return from this pleasant pilgrimage to the country that is the source and inspiration of American law, we hope that such meetings may become more frequent. Ten years would be a more appropriate interval than the more than thirty years which have elapsed since our last meeting in England. Inspired by this trip to the fountainhead of American law, those who were fortunate enough to attend our London meeting return. They return with happy memories of pleasant hours shared with our legal brethren of Britain. May we all be fortified as a result of this experience in our constant ambition, as heirs of the common law of the English-speaking peoples, to continue to strive to achieve Kipling's great goal for all men: "Leave to live by no man's leave, underneath the law".

Aggression

Two world wars, which stripped mankind of its savings and set back for a generation or more large segments of the schedule of future progress, were fought to outlaw aggression. Statesmen, who guided the destinies of the nations which were emerging as victors from the two conflicts, envisioned a new day in which dissensions among nations would be settled, not by resort to wager of battle, but by recourse to reason and persuasion addressed to the judgment of an international body such as the United Nations.

Yet the smoke of the battlefields of World War II had hardly lifted before it became apparent that some nations had learned nothing from the slaughter, the rubble and the devastation in which mankind had been so recently immersed. The most recent employment of the tactics of the blackguard for the purpose of subjecting the weak to the might of the unscrupulous is the one in Hungary. There, while the nations which revere justice look on with folded arms, a helpless people is trod under foot by military might. As reported in a treatise written by the International Commission of Jurists, which appears upon another page of this issue, Russia is guilty of

(Continued on page 954)

William Clarke Mason

Is Awarded the Association Medal

William Clarke Mason, of Philadelphia, Pennsylvania, became the twenty-second man to be awarded the American Bar Association Medal, the highest honor within the gift of the Association. The Medal was presented to Mr. Mason at the Annual Dinner in New York City on Monday, July 15, during the first portion of the 80th Annual Meeting.

The Medal is awarded for "conspicuous service to the cause of American jurisprudence". The citation accompanying the award said in part: "We can truly say of the lawyer we are honoring with the American Bar Association's Medal that he has given, not *some* of his time, but a lifetime, to the enhancement of the legal profession. In a career which has already spanned over half a century at the Bar, he has labored indefatigably in countless formal and informal assignments, resulting in the betterment of our profession on local, state and national levels. Time and again his innate modesty has prevented him from accepting the high honors which his grateful fellow lawyers have sought to bestow upon him and which he so richly deserved".

William Clarke Mason

Mr. Mason has been a member and chairman of numerous Association Committees. He was a member of the Board of Governors for three years and has been the Philadelphia Bar Association and Pennsylvania State Bar Association delegate to the House of Delegates, the governing body of the American Bar Association. For the past two years, he has been Chairman of the Association's Special Committee on Group Insurance, which developed two group life insurance programs for Association members.

The American Bar Association Medal, first awarded to Samuel Williston in 1929, has also been presented to such leaders of the profession as Elihu Root, Oliver Wendell Holmes, John Henry Wigmore, Charles Evans Hughes and Arthur T. Vanderbilt. The Medal is of 24 carat gold, three inches in diameter. On the obverse side is the St. Memin profile of Chief Justice Marshall, with the words from the Massachusetts Constitution, "To the end it may be a government of laws and not of men." On the reverse is a seated figure representing Justice with the single Latin word "Justitia".

Joseph Welles Henderson, 1890-1957:

Sixty-Seventh President of the Association

The American Bar Association and the whole Bar of the nation suffered a great loss when Joseph Welles Henderson died on July 25, 1957. Serving from 1943 to 1944, he was one of the great Presidents of the Association.

He was a true "Philadelphia Lawyer". A brilliant advocate, he was one of the country's outstanding trial counsel and participated in a number of historic cases before the Supreme Court of the United States, including matters in the fields of labor, religious freedom, corporations, insurance, aviation and admiralty. A man who conducted himself with dignity, humbleness and simplicity, his was a life of trying to help others, not only in the law, but in numerous other activities, especially in religion and education.

On the very day that he died he was scheduled to speak at the meeting of the Association's Section of Insurance, Negligence and Compensation Law in London. His subject was "An American Responds". He had intended to be in London for the meeting of the American Bar Association but important litigation prevented this. He was ably represented by his son, J. Welles Henderson, Jr., who spoke in his place.

Mr. Henderson was born in Montgomery, Pennsylvania, on February 6, 1890, the son of Samuel B. and Jean (Wells) Henderson. He was one of the youngest ever graduated from Bucknell University, receiving his A.B. degree in 1908.

His scholastic abilities were recognized in his membership in Phi Beta Kappa. He was also an honorary member of Omicron Delta Kappa and belonged to the Phi Kappa Psi Fraternity. He received his A.M. degree in 1913 from Bucknell, and the degree of D.C.L. in 1944 from the same institution, as well as an LL.D. from Temple University. Throughout the years he took an active interest in Bucknell, serving as Chairman of the Board of Trustees and on two occasions as Acting President of the University.

He was graduated from Harvard Law School in 1913, in which year he was admitted to the Pennsylvania Bar. In later years he was elected Vice President of the Harvard Law School Association and he was appointed a member of the Visiting Committee of that Law School.

Mr. Henderson, when he took office at the annual dinner of the Association at the Drake Hotel, Chicago, on Thursday, August 26, 1943, told in a moving way of the beginning of his career at the Bar: "I know that you will permit me", he said, "a personal reference for a moment, since my emotions are greatly touched when I grasp the handle of this gavel. This gavel has a very interesting history. When the Association held its first meeting in Saratoga Springs in 1878, the Secretary, find-

Joseph Welles Henderson

ing that there was no gavel available, went to a nearby hardware store and bought this carpenter's mallet for the sum of twenty-five cents. It did not then have on it the silver and gold bands. The hand that first grasped this gavel officially for the American Bar Association was the same guiding hand that took me into his office thirty years ago as a young boy just out of law school. He was a gentleman, a great lawyer, Treasurer of the Association for years, its President, and the last surviving founder, Mr. Francis Rawle."

The Rawle law offices were founded in 1783. It was in 1916 that Mr. Henderson became a partner of Francis Rawle and the firm name became Rawle & Henderson, which name Mr. Henderson continued to maintain after Mr. Rawle's death, and his son is carrying it on today.

On May 26, 1917, Joseph W. Henderson and Anne K. Dreisbach were married at Lewisburg, Pennsylvania. Their son, J. Welles, is their only living child.

During World War I, he served as a special insurance counsel for the Alien Property Custodian and acted as legal adviser to the Italian Consulate General in an eight-state district. In recognition of this service, he was decorated as an Officer and Chevalier of the Order of the Crown of Italy.

In 1919 he joined the American Bar Association and was continuously active in the work of many of its committees and of a number of the Sections and Section committees. He was a member of the General Council of the American Bar Association, a State Delegate in the House of Delegates, a member of the Board of Governors for three years, during all of which time he served on the Budget Committee, and became an Assembly Delegate in 1940.

During this whole period he also found time for useful activity in the Pennsylvania State Bar Association and the Philadelphia Bar Association, being Chairman of the Board of Governors of the latter. He also served as President of the Lawyers Club of Philadelphia.

He was a member of the Committee on National Defense of the American Bar Association and of its successor, the Committee on War Work, at the same time being Chairman of the Committee on War Work of the Pennsylvania State Bar Association for three years.

His greatest interest in the activities of the organized Bar was in the rendering of public service. He was active in the establishment of the Lawyers Reference Service in Philadelphia, serving as its first Chairman. He also served on various committees of related activities.

He was a member of the Executive Committee of the American Maritime Law Association of the United States and interested in various organizations in the admiralty field, and particularly those connected with the Port of Philadelphia.

Typical of the breadth of his interests was his appointment as a member of the War Department's Advisory Committee on Courts Martial and on the Board of Consultants of the Civil Service Commission concerning Hearing Examiner Personnel, and as a Special Assistant to the Attorney General of the United States.

Mr. Henderson's activities were not limited solely to the field of law. He was very active in the affairs of the Presbyterian Church, serving at one time on its national Board of Pensions and for a number of years as a Trustee of his local church. He was also on the Board of Trustees of the Tabor Home for Children.

He was President of the St. Andrew's Society of Philadelphia at the time of its 200th anniversary in 1947, and at the time of his death was serving a second term as President of The Union League of Philadelphia.

The AMERICAN BAR ASSOCIATION JOURNAL was proud to have him as a member of its Advisory Board.

Typical of the man was the prayer which he kept in his office desk drawer—

I thank Thee, God, for answered prayer,
For infinite and tender care,
For light that guides me on my way,
For strength to do my work each day,
For courage when the day seems long,
For joy that bids me sing a song;
For patience, God, to wait until
I see Thy good and perfect will;
For faith Thy promise to believe
And Thy great blessings to receive;
For love divine, the part of Thee
That lives in me eternally.

Policing the Administrative Process:

A Reply to Professor Bernard Schwartz

by Herbert R. O'Conor, Jr. · *of the Maryland Bar (Baltimore)*

In our January issue, Professor Bernard Schwartz of New York University proposed that a congressional committee be created to oversee the work of the many administrative agencies which are now a part and parcel of our Government. He argued that such a committee would enable Congress to control the activities of the agencies. Mr. O'Conor's thesis is that not only is such a committee undesirable but also that the administrative agencies are really a fourth branch of the Government, entitled to be treated as such.

The article in the January, 1957, issue of the JOURNAL entitled "Legislative Oversight: Control of Administrative Agencies", has failed to convince this reader of the validity of its thesis. True it is that the growth of administrative agencies has been speedy and piecemeal. But the contention that: "For there to be truly effective checks upon administrative action, control by the courts must be supplemented by congressional oversight" does not lead inescapably to the conclusion which is espoused, *i.e.*, the creation of a new congressional committee to oversee all agencies.

It would appear that the suggestion is based upon the belief that Congress and the courts are now doing an inadequate job of "policing the administrative process". Cast in this light, the question naturally arises: How much control over the administrative process is desirable?[1] The present system, which has evolved from a clear separation of powers among the three branches of government into a definite overlapping of function in the field of administrative law, can hardly be said to be functioning poorly. At the present time the agencies, operating frequently as lawmakers and frequently as administrators, are doing an efficient job and one of the reasons for this undoubtedly is the absence of complete control. They are of course beholden to Congress for funds and subject to investigation by it at any time. These hazards, however, do not lend themselves to use in such a way that the objective consideration of a particular case by an agency can be interfered with or influenced.

Decisions of the agencies are also subject to review as most of the cases cited by the author demonstrate. The fact that there are limitations on the scope of review does not mean that the review is superficial when matters within the province of the courts are being considered. The searching questions of the three-judge courts which hear some agency appeals attest to that.

It must be remembered, moreover, that those matters outside the scope of review have been made so for good reason. For some years it has been realized that: (a) the uniformity that was desirable in administrative rulings could not be achieved if the courts were to hear appeals *de novo*, and (b) problems handled by the agencies were largely technical and should be decided by experts. The Supreme Court enunciated the doctrine of administrative finality and the doctrine of primary jurisdiction to accomplish these two objectives.[2]

1. Very little the Supreme Court has indicated. In *Humphrey's Executor* v. *United States*, 295 U.S. 602, which involved attempted control by the executive branch over one of the independent agencies, the Court reviewed the debates in both houses which clearly shows that the Federal Trade Commission was not intended to be "subject to anybody in the government but . . . only to the people in the United States. The Commission had been set up to be separate and apart from any existing department of the government . . ." and was to be free from "political domination and control".

That this independence extends to all agencies is manifestly clear from the remarks of the Senate Judiciary Committee in discussing the Administrative Procedure Act. Mr. McCarron: "We have set up a fourth order in the tripartite plan of Government. . . . We found that the legislative branch, although it might enact law, could not very well administer it. So the legislative branch enunciated the legal precepts and ordained that commissions or groups should be established by the executive branch with power to promulgate rules and regulations. . . ." Administrative Procedure Act, Legislative History, Document No. 248, 79th Congress, page 297.

2. In the *Rochester Telephone* case (307 U.S. 125), the Supreme Court indicated that the doctrine of primary administrative jurisdic-

It would appear that the present system of substantial but not complete independence of the administrative tribunals from Congress, the courts and the executive branch may have produced the exact degree of balance that justice needs. To disturb that equipoise is a risky thing at best. The agencies have freedom but if they exceed their powers or subvert fair play they must answer in the courts of the land. If they fail to do a good job they are called on the carpet at Capitol Hill. Neither of these checks has been abused and yet the knowledge that they might come into play has undoubtedly served to stimulate the agencies into doing an alert and competent job.

Let us consider the proposal set forth in the JOURNAL article to see what reasons are advanced for disturbing the present balance in the relationship between executive and legislative departments and this fourth branch of the federal government. The nub of the plan seems to be contained in the sentence, "A committee such as that contemplated . . . would both scrutinize delegations of power to ensure that they are canalized so far as practicable, by effective standards and oversee administrative procedure to ensure conformity to fair play and due process." While one hesitates to differ with a scholar of Dr. Schwartz's attainments, the quoted sentence produces this reaction: Have not the courts, both state and federal, been most vigilant in insisting that legislation contain definite standards and that the agencies administering that legislation adhere to the requirements of due process? Do not the very *Schechter* and *Morgan* cases which the author cites mean just those two things? If there has been any departure from these principles or any relaxation in the attitude toward them it has not been noticed in the pages of the JOURNAL or in other reviews.

The point is made that some matters are common to many agencies and therefore require attention on a horizontal basis, and that a new committee could concern itself with such matters. Now assuming that just because some matters are common it would be well to have them considered in a way which prescinds from the nature of each agency and its area of responsibility, what proof is there that the job can best be done by an "able permanent staff" of a congressional super-committee?

We are told that this group would concern itself not only with "common" matters but also with "differences" and examine whether such differences are justified. Conceding that differences in procedure and approach are obstacles for the general practitioner of the law, it hardly follows that the chances of those differences being unjustified are so great that a new permanent staff should be created. The fact that these differences have been worked out over a period of years by thousands of conscientious people probably means that the differences, or many of them at least, are justified. At any rate, he who proposes what necessarily would be a substantial venture, financially, certainly has the burden of showing that there is a genuine need for correction. It is hardly sufficient merely to point out an area in which work might be productive.

Above all, there is the fact that the creation of a congressional committee to oversee all agencies would be the issuance of a blanket invitation to one and all to bring in their complaints. As a matter of fact, Professor Schwartz envisions this super-committee as overcoming ". . . the lack of an adequate forum outside the executive itself where the ordinary citizen can 'ventilate' his complaints against improper administrative procedures".[3] This plan would be tantamount to setting up a tribunal to review the work of an equal unless we are to adopt the view that the administrative department is an inferior one. Chief Justice Vanderbilt, whom Dr. Schwartz quotes on the general responsibility of the Bar, has also made the following comment: "The work of a judge cannot be made subject to the supervision of another branch of the government if the judicial department is to remain independent."[4] Is not this principle equally applicable to the work of the commissioners of an agency?

A Congressional Committee . . . *A Blanket Invitation*

It is not difficult to visualize the citizens of Baltimore, Phoenix or Hartford complaining to this proposed committee that the CAB has discriminated against *its* airport, in which case it would be incumbent upon their Senators and Representatives to demand an investigation. It requires no more imagination to visualize one union contending that an election conducted under the auspices of the NLRB was improperly handled to the preference of another union in which case the former would certainly appeal to its congressional friends for aid and comfort. One can conceive of this committee sitting in judgment upon the correctness of a decision of the Federal Power Commission as to the states through which a natural gas pipeline should pass.

Chief Justice Vanderbilt has pointed out[5] numerous examples of legislative encroachment upon the independence of the judiciary. "The period from the Revolution to the Civil War was clearly the heydey of the legislative arm of government in both the states and the nation. We find state legislatures by special act annulling or reversing judgments, granting new trials after final judgments in the Courts, giving the right to appeal after the time to do so had expired. . . ." Although that era is fortunately closed, Justice Vanderbilt points out that there are

tion had been firmly established since 1907 when *T. & P. Ry. Co.* v. *Abilene Cotton Oil Co.*, 204 U.S. 426, was decided. In *Far East Conference* v. *United States*, 342 U.S. 570, the Supreme Court said that the policy of not passing over agencies applies ". . . even though the facts after they have been appraised by special competence serve as a premise for legal consequences to be judicially defined".

3. Hearings on H. Res. 462, page 58.

4. THE DOCTRINE OF THE SEPARATION OF POWERS (The University of Nebraska Press, 1953) page 116.

5. THE DOCTRINE OF THE SEPARATION OF POWERS, *supra*.

remnants of it in such things as the settlement of claims against the state by legislative enactment and the attempts by some state legislatures to control admissions to the Bar. Who can say to what aspect of administrative agency functions an able and permanent staff would not turn if Pandora's box were once opened? For we must make no mistake about it, the initiative would come more from energetic and ambitious staff members than from busy members of Congress.

Chief Justice Vanderbilt refers to the trend in this country to give the courts the power to regulate their own procedure and administration, and then to hold them responsible for the results:

> The case for judicial rule-making has never been better stated than by Dean Pound and Dean Wigmore a quarter of a century ago. It was largely their teaching and the dissatisfaction of the Bench and Bar with complicated codes of civil procedure that led in 1938 to the unanimous adoption by the American Bar Association of the recommendation:
>
> That practice and procedure in the courts should be regulated by rules of court; and that to this end the courts should be given full rule-making powers.[6]

The reasons for this policy are obvious:

> Rules of Court are made by experts who are familiar with the specific problems to be solved and the various ways of solving them. Preliminary drafts of the rules can and should be submitted prior to promulgation to the scrutiny of the entire bench and bar for their criticisms and suggestions. . . . The rule making process must be a continuous one. . . . Changes must be made whenever a need is felt without waiting for stated legislative sessions and without burdening already overworked legislators.[7]

The logic of this policy is compelling and the applicability of it to the administrative process clear. Rules of court and rules of agencies perform the same function of setting forth procedural steps for those who are concerned with the processes of either the judicial or administrative branch. It can hardly be denied that establishing or modifying procedure before an administrative agency can best be left to the experts, *i.e.*, the official personnel of the agency in consultation with the practitioners who come before it representing diverse interests and parties. It is only realistic to take into account the fact that elected representatives on Capitol Hill have neither the time nor the day-to-day contact with agency matters to enable them to write rules of procedure.

As a matter of fact, the genius of the Constitution is the diffusion of sovereignty—the absence of any one body or agency in which supreme authority is located.[8] It is not overstating the point to say that Professor Schwartz's proposal runs head on into this principle.[9] The concentration of authority over administrative agencies in one congressional committee would mean the enlargement of the control of Congress over the agencies. It is no answer to say that Congress would have no more power after the creation of the Committee on Administrative Procedure than it now has, for the fact is that it is not now exercising such pervasive control.

While the authors of the Constitution could not have anticipated the growth of a fourth branch of government, the reasoning employed by them in contriving the division of powers is helpful in dealing with the problems created by the new branch. In No. 51 of the *Federalist*, Madison points out that the method used to maintain this partition of authority was "by so contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places". He refers to the fact that the legislature necessarily predominates and he enumerates remedies used to offset this and observes: "It may be necessary to guard against dangerous encroachments by still further precautions."

The present system in Congress of assigning proposed agency legislation and related matters to the particular Committee operating in the field involved (Interstate and Foreign Commerce, Judiciary, Banking and Currency, etc.) is working well. It has produced a decentralized, smooth process and has tended to keep the two branches in their proper spheres. There have been no claims that this system is not working well. The proponents of a new committee having over-all jurisdiction have not pointed to a situation which cries for relief; indeed they have not cited one instance of inefficiency or injustice. Until and unless there is an injury there is no need to create a remedy.

There are now pending in the two houses of Congress similar bills which would create an Office of Federal Administrative Practice. Such an office was the first recommendation of the Conference on

Fabian Bachrach

Herbert R. O'Conor, Jr., is a member of a Baltimore law firm. He received his A.B. degree from Loyola College in Baltimore and his LL.B. degree from the University of Maryland. He is Assistant City Solicitor of Baltimore and a member of the Board of Welfare of the state.

6. THE DOCTRINE OF THE SEPARATION OF POWERS, *supra*, pages 107-108.

7. THE DOCTRINE OF THE SEPARATION OF POWERS, *supra*, pages 107-108.

8. See the SUPREME COURT AND THE NATIONAL WILL by Dean Alfange, Chapters II and III, and, THE AMERICAN COMMONWEALTH by James Bryce, Chapter IV.

9. Daniel Webster once spoke out on the floor of the United States Senate on the necessity of maintaining a division of power among the several departments and contended ". . . the continuance of regulated liberty depends on maintaining these boundaries". Quoted by Francis Lieber in CIVIL LIBERTY AND SELF-GOVERNMENT, pages 153-154.

Administrative Procedure called by the President of the United States on April 29, 1953. The pending bills were the subject matter of a committee of the American Bar Association and have been endorsed by the House of Delegates. While these measures do not specifically purport to accomplish the ends that Mr. Schwartz has written about, the office they propose would be the logical place to carry on the work of accomplishing such uniformity as is practicable in rules, admission requirements, forms, etc. Actually, a start has been made in this direction by the recently established Office of Administrative Procedure in the Justice Department. More important, perhaps, than the attainments of these desirable ends, an independent Office of Federal Administrative Practice would be a constant reminder to the Bench, Bar and public that even though we are not always mindful of it and regardless of how we feel about it, the government of the United States now has and will continue to have a fourth branch. While the agencies constituting this department are "creatures" of another branch they have now reached adulthood. No longer should they be regarded as the stepchild of the legislative having some traits of the executive and judicial. Rather, the agencies should be accepted for what they are, a full brother in a family of four.

The President's Page

(Continued from page 867)

sociation, we must develop a means whereby more lawyers know what the Association is, what it stands for, and what they can do to help accomplish its objectives. We cannot expect lawyers to belong with pride, and to participate with enthusiasm, unless they have this knowledge. And if the American Bar Association is to be effective, it must be strong and united at the "grass roots" of the legal profession. That is why this effort to serve the "grass roots" and convince all lawyers that the Association is serving their needs is so all important.

Concentration on essential aids in the "bread and butter" category should not blind us to the fact that the Association's manifold services to the public also aid our profession in an economic way. The increased prestige for lawyers which flows from the American Bar Association's public service programs in law reform, improvements in judicial and administrative justice, legal aid, international law—to mention only a few—is of incalculable aid to all lawyers. The increased prestige which flows from the Association's work in improving legal education and supporting high ethical standards and the public relations value of the increased grievance investigations under the newly created Committee on Grievances are also of immense value to all lawyers. No one can deny that anything which increases the prestige of our profession helps to increase the economic standing of lawyers. A highly regarded legal profession will be sought out and entrusted with financially rewarding legal work, while a degraded profession will not.

Much has been said and written about incomes of lawyers in comparison with other professions and wage earners in general. The figures seem to vary with each survey, but they are sufficiently in agreement to demonstrate the fact that our profession has fallen behind in an economic way. To use only one illustration, *Fortune Magazine* has reported that from 1929 to 1951 incomes of medical doctors increased 157 per cent, ordinary wage earners 144 per cent and that of lawyers only 58 per cent. More recent figures are needed for any really meaningful comparisons, but the trend is clear. So is the need for improvement in the lawyer's economic status. From its inception to the present zenith of its position as the world's greatest nation, our government has been in large part conceived, created and operated by lawyers. Our country's tremendous achievements are due to the freedom under law which exists here—a freedom created and protected by lawyers. Our profession cannot continue to perform its high and important function unless this bleak economic picture is changed.

We learned in England that many brilliant young men no longer go into the law there because the earnings of lawyers are so low. That the same conclusion has often been reached here is certain. Engineering, medicine and other professions have brought their economic status more in keeping with the current era. It will be the task of the newly created Committee on Law Practice Economics to study this whole subject and report such recommendations as will aid in achieving the same result for the legal profession.

One aspect of the problem could be termed "public relations" within our profession, and even within our Association. As indicated already, many lawyers do not appreciate the importance and value of the American Bar Association. They are too busy, too closely concerned with their own problems; and they are not reminded sufficiently of the assistance and benefits they have and might have through the Association. We do not tell lawyers enough—or constantly enough—about what the American Bar Association is doing for the public, and more importantly for the legal profession. Ignorance of the constructive work of our Association is not limited to the so-called "grass roots" lawyer. Lawyers in large cities are just as uninformed. Our Executive Director, Joseph D. Stecher, has prepared and released a "Summary of Activities" of the American Bar Association for 1956 which all lawyers should read and re-read. That Summary demonstrates in capsule form what the Association's national leadership, services and accomplishments really add up to in value to our profession and to the public.

In this and in all other activities and programs of our Association your comments, ideas, suggestions and assistance will be most gratefully received.

Communism or Freedom:

The Legal Profession and the Rule of Law

by Ernest Angell · *of the New York Bar (New York City)*

Many of the nations of the Near and Far East and on the continent of Africa seem to lean toward the ideals of the Communist state with its deceptive promises. Mr. Angell believes that the legal profession of the Western World can do much to overcome this trend. He writes of the work of one organization—the International Commission of Jurists—and its efforts to spread the doctrine of the rule of law. Readers of the Journal may want to follow this article by reading the Commission's report on Soviet aggression in Hungary which is also published in this issue (see page 928).

To live in this revolutionary age is to experience anxiety over the permanence of our domestic institutions and varying degrees of concern over the sweep of upheavals as they occur or are threatened abroad. Concern ranges from passive conviction that the superiority of our establishments is so self-evident as to insure their survival, to the unreasoning fear that bids us erect walls of insulation against the penetration of alien ideas. The training and habits of the legal profession do not exempt its disciples from these reactions to the stimuli of the vast ferment of our day. These reactions are, moreover, complicated quite naturally by ignorance of foreign legal thinking. How many of us have, or twenty years ago had, any accurate information about the actual course of the famous Russian purge trials or, more to the point, any understanding of why the Bolsheviks seemed to know nothing and to care little about the elements of justice under law which our naïveté prompts us to assume is the rule of all mature civilizations?

In the past decade America has poured out billions of dollars to bolster the faltering economy of nations new and old, more billions to create and maintain military defenses. We also make export in a much more modest stream of our own social and intellectual wares through radio and other forms of publication.

This writer is convinced that neither the size of foreign military and economic aid appropriations nor the vigor of the Voice of America and Radio Free Europe afford assurance that the revitalized Arab countries, the satellites of Russia and the new nations of the Far East will permanently accept democratic ideals and practice, even the fundamentals of "justice under law". The variety of choice offered by the democratic process creates a "confusion of freedoms" in those unaccustomed to the rigors of its successful practice.

There is a whole new ruling class in many of these nations, nations tasting for the first time the lower-branch fruits of independence and reaching for the higher lures of stability and wealth. These new rulers reveal in disturbing proportion a strong bias against the West and a predilection for the idealized theory of the Soviet form of government, however deceptive its reality. The great problem of the democracies is how to infuse this predilection with the underlying realities, how to induce an understanding and acceptance of the viability and greater long-range satisfactions of the forms and practices of our tradition. The legal profession can make a contribution; American lawyers can offer a full share to this.

The very mass of these presently uncommitted peoples and their mistrust of the West present the insistent challenge to a professional understanding by us of the deep variations between our legal system in its ethics, substance and procedures on the one hand, and other systems which thus far fail to accept what we are pleased to consider the natural superiorities of our own. The challenge is equally to implement effectively the convictions of our collective experience, to find and use the means to spread through lawyers and judges and scholars

from Gibraltar south to Singapore, ultimately we may hope to Warsaw and Moscow and Peiping, the supremacy of law, the concept of individual rights in relation to the state, of an independent judiciary,[1] of a courageous Bar.

There is in existence today a medium, a new unit mechanism hereafter discussed in some detail, which is hammering out the tools for such a practicable understanding of other legal systems—including specifically and pointedly Communist law—and tools for offering to our colleagues of other lands, especially those in most of the score of newer nations of the past decade, the means for them to understand what we mean by "justice under law".

Before examining the tools now at hand, it would be useful to reflect upon what we mean by this common phrase and its equivalents. Rightly, we lawyers of Western civilization are convinced that the rule of law rather than the form of society—be it a republic or a constitutional monarchy—is the cornerstone, the very foundation and binding cement of a tolerable way of community life. It is built from 2,500 years of continuous experience that began in Greece before the Age of Pericles.

Although the history of the development of the essential components of government under law lies outside the limits of this paper, we may note that its theory and practice consist of three elements; substantive limitations upon the scope of governmental power in its application to the rights of individuals, which thus may not be invaded by action of the government; procedural limitations upon governmental power which are applicable even within the limits of its substantive scope; and institutions through which these principles may be effectively invoked and vindicated.[2] Let it be remembered that all of these elements in proper combination minister equally to the stability of social order and the necessary security of the state.

Every lawyer will readily cite illustrations and examples of these essential elements of government under law. Opinions will differ as to the nature of their origin and claims to validity: *i.e.*, the various forms of "natural" law, the logic of reason suffused with ethical concepts, law as the fiat of the state tempered by the clash of conflicting interests, etc. These, however, are the background elements of philosophical approach and validation; they are not immediately relevant to the fact of acceptance by us of the results in the impact of the law upon daily life. We are concerned, therefore, with how this aggregate fact of general acceptance in our societies may be made explicit to the ruling class of nations and peoples still in their relative infancy, of mid-twentieth century appearance as entities new in structure and orientation.

The present phase of Soviet tactic in its qualified relaxation of hostility to foreign ideas and of bars to communication appears to offer a partial opportunity to present in that area the characteristics of other cultures.[3] Khrushchev made avowal in his famous "secret" speech to the Twentieth Communist Party Congress in February, 1956, of Stalin's systematic violation of what we know as due process of law. The post-Stalin emphasis is now on promises of reform, chiefly changes in Soviet law.[4]

A similar development, however rudimentary, has taken place in Poland, which at least purports to reverse in part the repressive measures of 1950. The late-September, 1956, trials of those charged with complicity in the previous June riots at Poznan offer at this writing a peephole of observation of how far, if at all, this process of reversal of naked dictatorship and of restoration of some semblance of the rule as well as the role of law has proceeded. To record these surface manifestations is to do no more than voice the hope that they may indicate the slowing-down of the extreme revolutionary movement of the Stalin era, some narrowing of the gulf between our ideals and Communist ruthlessness. Observing these indicia, we must at the same time maintain a reserve position of skepticism as to intention and permanence of substantial change.

In the meantime, the new nations of the Near and Far East fluctuate between the opposing poles of democratic and Communist social order, with, we fear, the latter in the ascendancy. We should bestir ourselves now to do all that we can to inform the lawyers and judges of the yet uncommitted nations of what we mean by the rule of law and how it works. While there are very few of us indeed who can individually and separately create or seize an opportunity to offer our wares beyond the Pillars of Hercules and the Hellespont, even if we would be welcomed in so doing, there does exist in Europe a legal entity of growing stature and potential admission to the East which American lawyers can effectively use by several methods of support and co-operation.

An earlier article in this JOURNAL discussed the first efforts of the International Commission of Jurists.[5] This body was set up in 1952 as a self-started, private small committee

1. By contrast, *cf.* A. Y. Vyshinsky: "Capitalist theorists . . . endeavour to picture the court as an institution which is above social classes, is beyond politics and is guided . . . by dictates of law and justice common to all men. Such understanding of the essence of the task of the court is deceptive in its roots. The court has always been a tool in the hands of the ruling class, securing the domination by this class and protecting its interests." Vyshinsky, SOVETSKOE GOSUDARSTVENNOE PRAVO" (Russian ed., 1938) page 449.

"Neither court nor criminal procedure is or could be outside politics. This means that the contents and form of judicial activities cannot evade being subordinated to political class aims and strivings." Vyshinsky, "THE THEORY OF EVIDENCE IN SOVIET LAW," (in Russian, 1st ed., 1941) page 31. This was quoted by Dr. V. Gsovski, Chief of the Foreign Law Section of the Law Library of the Library of Congress.

2. The writer has drawn liberally, with permission, from Professor Milton Katz of Harvard Law School, "Government Under Law and the Individual—Notes for a Panel Discussion", July, 1956, unpublished.

3. Chalmers M. Roberts, *The Widening Chinks in the Iron Curtain*, THE REPORTER, October 5, 1956, page 11.

4. *Cf.* the somewhat differing conclusions of Professor Harold J. Berman, of Harvard Law School, in *Soviet Legal Reforms: Steps Toward Justice*, THE NATION, June 30, 1956, page 546; and Dr. V. Gsovski, *op. cit.* See also William O. [Mr. Justice] Douglas, *Russian Journey*, 1956, *passim* and page 145.

5. *Free Lawyers and Cold War: The International Commission of Jurists*, by Tom Killefer, 41 A.B.A.J. 417 (May, 1955).

Washington, D. C., CHANGES IN THE LAW BEHIND THE IRON CURTAIN AFTER STALIN'S DEATH, (July, 1956).

of internationally minded lawyers dedicated to analyzing and dramatizing to their professional brethren of the free world the systematic injustice of Communist law—first in East Germany, later in the satellite countries.

The Commission is representative of West German, Scandinavian, Dutch, Swiss, British, North and South American common traditions of freedom under law. The President of the Commission is Judge Joseph T. Thorson of the Canadian Court of Exchequer. Dudley B. Bonsal, of New York, is chairman of the Executive Committee and hence the chief conduit of the American Bar to the Commission. With its office at The Hague and starting with most modest funds and limited personnel, the Commission gathered from refugees and many correspondents the legal materials of serious documentation of characteristic and systematic violations of individual rights under Communist law as practiced behind the Iron Curtain. This collection of Communist statutes, decrees, ordinances, judgments, sentences upon criminal convictions, etc., was published by the Commission in 1955 in a volume of 535 pages, entitled *Justice Enslaved*. Translated into English, French and German, the book has been widely distributed among the legal profession of the free world countries.

The Commission then assembled a congress of 150 lawyers from forty-eight countries which met in Athens in June, 1955, and presented to that gathering this indictment of Communist legal tyranny, drawn in the very words of its own excesses. Men of the law came from the corners of the earth—Finland, Tasmania, all the countries of Western Europe, Turkey, India, Pakistan, Burma, Korea, North and South America, even refugees from the Communist lands. The attending lawyers included a representative delegation from our own Bar, several of whom were appointed "observers" for the American Bar Association.

The raw materials in *Justice Enslaved* were intensively examined by groups of the lawyers assembled in Athens. Scholarly addresses on the nature, elements and significance of Communist law and its contrast with the traditional rule of law were delivered to the Congress members. They departed to their several homelands armed with some degree of knowledge of what this antithesis to justice under law revealed. Many vowed they would make distribution of this volume to their colleagues at home; a judge from Burma ordered one hundred copies. To many of those present, perhaps to most, this exposure was the first contact with the raw essentials of Communist law.

The most significant and hopeful impulse from the Athens Congress was not merely the deep impression made on the attending guests by the Communist departure from a tolerable legal norm, but the discovery of the field in which lawyers trained under different systems of law found agreement upon the fundamental substance of justice under the rule of law, quite uncolored by their nationalistic convictions concerning forms of government and the economics of their own societies. A leading Indian attorney who was a socialist in his country was among the most outspoken critics of Soviet law and ranged himself squarely with disciples of the common law and Continental civil law. His approach and convictions were typical of the tenor of the conference, irrespective of national origins.

A few of the many points of agreement expressed in resolutions and findings of this Athens meeting will illustrate this area of agreement:

> The Committee expresses its grave concern at the apparent abuse of the process of courts for specific predetermined purposes of the executive branch of the government in the several People's Democracies. The evidentiary material before the Committee makes it appear *prima facie* that the personnel, machinery and procedure of criminal courts in those countries are being utilized to serve as cloak and cover for unlawful administrative acts and give them the outward appearance of judicial process.[6]

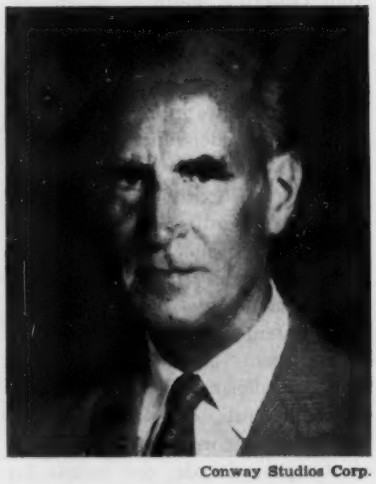
In the countries of the Soviet orbit private property is subjected to discrimination in favour of State property, confiscations and expropriations take place, which are arbitrary and run counter to the principles of a constitutional state. Such compensation, if any, as is paid upon expropriation, is inadequate or illusory. There is no possibility of appeal to an independent court on account of encroachments on private property. . . .[7]

That in accordance with the principles of justice the State should be subject to the law in the same way and to the same extent as owners of private property or private enterprises.[8]

Trade unions are employed by the State as an instrument for furthering its own policy. They do not represent the interests of the workers.[9]

Working conditions and wages are determined unilaterally by the State on the basis of laws and regulations as well as by means of so-called collective agreements which however are not freely negotiated contracts between equal partners.[10]

6. Report of the International Congress of Jurists, Athens (June, 1955), published March, 1956, The Hague, page 159.
7. *Ibid.*, page 160.
8. *Ibid.*, page 161.
9. *Ibid.*, page 162.
10. *Ibid.*, page 163.



Conway Studios Corp.

Ernest Angell is a member of the Ohio and New York Bars, now in private practice in New York city. He is a graduate of Harvard College and of the Harvard Law School. In the past, he has been an official of the Securities and Exchange Commission and Chairman of the Federal Loyalty Review Board for New York and New Jersey. He is Chairman of the Association's Committee To Co-operate with the International Commission of Jurists.

The Congress at its final session adopted the "Act of Athens" by which

> We free jurists from forty-eight countries . . . do solemnly declare that:
>
> 1. The State is subject to the law.
>
> 2. Governments should respect the rights of the individual under the rule of law and provide effective means for their enforcement.
>
> 3. Judges should be guided by the rule of law, protect and enforce it without fear or favor and resist any encroachments by governments or political parties on their independence as judges.
>
> 4. Lawyers of the world should preserve the independence of their profession, assert the rights of the individual under the rule of law and insist that every accused is accorded a fair trial.[11]

Chief Justice Earl Warren has written of this Act:

> If by 1980 this writ should run through all the nations whose lawyers helped frame it, then indeed will the great tradition of government under law be established beyond challenge in our world.[12]

By these studies and the wide distribution already made of the self-convicting materials drawn from the law of a half-dozen Communist states, the Commission has made a positive contribution to awareness of human degradation under the guise of law. The expected continuation of these studies by the Commission should expose the extent to which, if at all, substantial tempering of previous excesses as promised has been achieved. In this work the Commission is able to call upon the co-operation of legal scholars of East German, Polish and other backgrounds who have escaped from the one-mind, one-track rigidities of those areas.

The Commission has recognized that it is time to turn its energies and experience toward the other pole, the formulation of one or more statements of what the non-Communist legal world understands the rule of justice under law to be in those aspects of substance and form which are common to many peoples of generally free legal tradition. This does not mean merely those of Western Europe and the Scandinavian countries, the English-speaking nations and Latin America; the tradition includes Turkey, India whose law is largely British, Pakistan, Ceylon, Burma, the Philippines, Japan with its adoption of Germanic law, and doubtless others. Plans have now gone beyond the sketch phase for a series of statements of the rule of law insofar as it is a characteristic content of legal tradition in these many lands. Only one who is thoroughly grounded in several areas of comparative law could safely hazard a prophecy as to the extent of the common area which can be thus discovered and stated. The heartening experience at Athens, however, as shared with others of the North American Bar who attended, offers a fair prospect of finding and persuasively stating a substantial accord.

Knowledge of the work of this still-young International Commission has begun to penetrate the American Bar. In 1953 the American Bar Association at its Annual Meeting in Boston gave the following endorsement:

> RESOLVED, That the American Bar Association endorses the program of the International Commission of Jurists in exposing systematic injustice and denials of individual rights in countries lying behind the Iron Curtain and in bringing to lawyers in those countries who attempt to secure justice and to protect such rights the encouragement and understanding of the lawyers of the free world.

In 1954 the Association, through its Section of International and Comparative law, created a special committee to co-operate with the Commission. That committee now has some twenty members in as many American cities. Many of the local groups in these cities have heard at first hand from the former Secretary-General of the Commission, A. J. M. van Dal, a Dutch lawyer, the story of its creation, early struggle, later growth, the Athens Congress, and the opportunity which its contacts with the profession in fifty countries now offer for lawyers to aid in its crusade of the mind: *i.e.*, the continuing dissemination of accurate knowledge of Communist law as actually practiced and, as the newer phase, of the rule of law in the non-Communist countries. Norman Marsh, formerly lecturer in comparative law at Oxford University and now Secretary-General of the Commission, spoke at co-operating committee group meetings in a number of American cities in early 1957.

Four former Presidents of the American Bar Association, the late George M. Morris, Jacob M. Lashly, Robert G. Storey and E. Smythe Gambrell, were early active supporters of the Commission in our Bar. Mr. Lashly is a member of the Co-operating committee group meetdent David F. Maxwell attended meetings of the Committee in Philadelphia and New York, lending the weight of his position and keen interest. Victor E. Folsom, of New York, as former Chairman of the Section of International and Comparative Law, and James Grafton Rogers, former Assistant Secretary of State and ex-President of the Colorado Bar Association, with others too numerous to mention, have given constant and vigorous assistance to the Committee.

The American Fund for Free Jurists, Inc.,[13] has been created as a tax-free, non-profit unit; this raises money by voluntary contributions to help support the work of the Commission and distributes in the United States publication materials of the Commission.

Many in the local American groups have said: "How can we help? Please tell us." It has now, after a year's study, become reasonably clear how these lawyers in many cities can individually take an active and extremely useful part in making available to men of the law in other lands a syllabus of the principles and practice of justice under law as they are understood and applied in the United States. This method of practical participation in thus spreading widely a working knowledge of the

(Continued on page 955)

11. *Ibid.*, page 9.
12. *"The Law and the Future,"* FORTUNE MAGAZINE, November, 1955, pages 106, 230.
13. 36 West 44th Street, New York 36, New York.

Aggression in Hungary:

A Soviet Definition Condemns Russia

It has been nearly a year since the Soviet Government shocked the civilized world by its brutal repression of the revolt in Hungary. The following paper, prepared by the International Commission of Jurists, charges the Soviets with "direct" and "indirect" aggression, using the Communist Russian regime's own definition of "aggression". The facts are based entirely on Hungarian and Soviet sources.

1. The Soviet definition of aggression, first proposed in 1933,[1] reintroduced in 1950[2] and in an expanded form put before the United Nations as recently as 1953,[3] is the appropriate touchstone for assessing the legal significance of the recent Soviet intervention in Hungary.

2. The facts on which a legal judgment must be based may be summarized from Hungarian[4] and Soviet sources in the following way:

(a) October 23, 1956. Disturbances in Budapest, rapidly spreading to the whole country.

(b) October 24, 08.00 hours (G.M.T.). Radio Budapest announces a request for help by Hungarian Government from Soviet forces stationed in Hungary under the Warsaw Pact and states that these forces are assisting in restoring order. But on October 30, Radio Budapest states that Nagy had not signed the Hungarian Government appeal to the Soviet Government, which it attributes to Hegedüs (Prime Minister until the morning of October 24) and to Gerö (First Secretary of the Hungarian Workers Party until the morning of October 25).

(c) October 24. Nagy takes over the post of Prime Minister.

(d) October 25 and 28. Nagy announces negotiations between Hungarian Government and Soviet Union in which among other questions that of the withdrawal of Soviet troops in Hungary would be discussed.

(e) October 31. Nagy requests the Soviet Government to state place and time for negotiations between the latter, the Hungarian Government and the other parties to the Warsaw Pact regarding the withdrawal of Soviet troops from Hungary in the light of the Soviet Government statement of October 30 on relations between the Soviet Union and other socialist states.[5]

(f) Meanwhile on October 28, 29, 30 and 31 Radio Budapest announces that agreement has been reached on the withdrawal of Soviet troops from Budapest. Between October 29 and 31 further announcements are made on the withdrawal. It is announced that October 31 has been agreed as the final date for the withdrawal from Budapest.

(g) November 1. Nagy demands of Soviet Ambassador to Hungary that Soviet troops newly arrived from the Soviet Union be immediately withdrawn; he gives notice to terminate Hungarian adherence to the Warsaw Pact and declares Hungary's neutrality. Nagy informs the Secretary-General of the United Nations and requests inclusion of the question of Hungarian neutrality on the next agenda of United Nations General Assembly.[6] Further protests to the Soviet Ambassador in the same sense are made by the Hungarian Goverment on November 2 and another communication is sent to the Secretary-General of the United Nations. No announcement of these developments is given in the Soviet press or radio.

(h) November 3. A joint committee of Soviet military leaders and representatives of the Hungarian Government meets in the Parliamentary Buildings in Budapest. Radio Budapest announces that the Soviet delegation has promised that no further moves of Soviet troops would take place across the Hungarian frontier.

(i) November 4, 04.19 hours. Nagy says over Radio Budapest: "In the early hours of this morning Soviet troops launched an attack against our capital with the obvious intention of overthrowing the lawful democratic Hungarian Government. Our troops are fighting. The Government is in its place. I am informing the people of the country and world public opinion of this."

1. League of Nations, RECORDS OF THE CONFERENCE FOR THE REDUCTION AND LIMITATION OF ARMAMENTS, Series B, Vol. 2, page 237 (Doc. Conf. D/CG 38).

2. United Nations Document A/C 1/608 Rev. 1.

3. UN Doc. A/AC. 66/L.2/Rev. 1 (reproduced in UN Doc. A/2638). Russian text: *Pravda*, 27 August 1953; German translation: *Osteuropa-Recht*, 1956, page 283.

4. As reported in *BBC Summary of World Broadcasts*, Part IIb, 1956, No. 772-775.

5. PRAVDA, October 31, 1956, page 1; English translation: NEW TIMES (Moscow), 1956, No. 45, pages 1-2.

6. Text: NEW YORK TIMES, November 2, 1956, page 5, column 3.

At 04.58 hours, Radio Budapest states: "Imre Nagy, Premier of the National Government calls on Pal Maleter, the Defense Minister, Istvan Kovacs, Chief of the General Staff and other members of the military mission who went to Soviet Army HQ at 21.00 hours last night and have not yet returned, to do so immediately and take charge of their respective offices."

At 07.10 hours Radio Budapest falls silent. Meanwhile another transmitter announces at 05.00 hours that Kadar has formed a "Revolutionary Worker-Peasant Government"; this announcement is repeated by Radio Moscow on the same morning.[7] Resuming transmission at 22.17 hours Radio Budapest declares that Nagy government has disintegrated and ceased to exist, an announcement anticipated by Radio Moscow at 21.39 hours.[8]

3. (a) Does Soviet intervention in Hungary, as set out above, constitute "aggression" according to the above-mentioned Soviet definition the relevant part of which (Article 1) reads as follows:

> In an international conflict that State shall be declared the attacker which first commits one of the following acts . . .
>
> (b) Invasion by its armed forces, even without a declaration of war, of the territory of another State;
>
> (c) Bombardment by its land, sea or air forces of the territory of another State or the carrying out of a deliberate attack on the ships or aircraft of the latter;
>
> (d) The landing or leading of its land, sea or air forces inside the boundaries of another State without the permission of the government of the latter, or the violation of the conditions of such permission, particularly as regards the length of their stay or the extent of the area in which they may stay.

(b) Soviet intervention clearly constitutes aggression if it took place without Hungarian permission. Permission to station Soviet troops in Hungary is given by the Warsaw Pact of May 14, 1955, provided it is "by agreement among the states, in accordance with the requirements of their (*i.e.*, the signatories to the Warsaw Pact) mutual defense".[9]

(c) From Article 4 of the Warsaw Pact[10] it emerges that "mutual defense" envisages only defense against the armed attack of another state; it specifically does not cover the suppression of the people's rising in one of the signatory states.[11] That "armed attack" only relates to relations between states is also emphasized in Soviet legal literature, where treaties between "capitalist" states concluded "with the purpose of suppressing any struggle for national liberation" are criticized.[12]

(d) As the Soviet intervention cannot be justified by reference to "mutual defense", *it must be concluded that this intervention constitutes "aggression", according to the Soviet definition of that term, unless it had the permission of the Hungarian Government, independent of the Warsaw Pact.*

(e) But can it be said that the Soviet intervention took place with the permission of the Hungarian Government?

It is, in the first place, extremely doubtful on the facts above stated that the request made on October 24 to the Soviet Government for the support of Soviet troops came from the constitutionally competent organ[13] of the Hungarian Government (See 2 (a) above).

Secondly, it is clear that, in the light of the Soviet definition of "aggression", not even a request by a foreign government can from the standpoint of international law justify intervention to support a government against an internal rising. Article 6 of the Soviet definition is directly applicable to the Hungarian situation:

> Attacks such as those referred to in paragraph 1 and acts of economic, ideological and indirect aggression . . . may not be justified by any arguments of a political, strategic or economic nature. . . .
>
> In particular, the following may not be used as justifications: A. The internal position of any State, as for example . . .
>
> (d) Any revolutionary or counter-revolutionary movement, civil war, disorders or strikes;
>
> (e) The establishment or maintenance in any State of any political, economic or social system.

Thirdly, the repeated requests of Prime Minister Nagy, on behalf of the Hungarian Government, to withdraw Soviet troops cancelled any permission, if ever given.

Fourthly, the entry of further Soviet troops was never approved by the Hungarian Government, which protested strongly against it.

(f) *The conclusion is therefore that the Soviet Government committed and continues to commit clear acts of aggression against the Hungarian Government, according to its own definition of aggression.*

4. Furthermore, the Soviet definition recognizes "indirect aggression" in Article 2 which reads as follows:

> That State shall be declared to have committed an act of indirect aggression which: . . .
>
> (c) Promotes an internal upheaval in another State or a reversal of policy in favour of the aggressor.

In the illegal detention of the Hungarian representatives sent to negotiate with the Soviet military authorities on November 3, in the forcible overthrow of the Nagy government and in the setting up of the Kadar régime, *the Soviet government is self-condemned of "indirect aggression".*

5. The Soviet intervention in Hungary therefore is "direct" and "indirect aggression" according to its own definition.

---

7. *BBC Monitoring Report*, 1956, No. 5, 192, page 2.
8. *Ibid.*, No. 5, 193, pages 1-2.
9. Russian text: PRAVDA, 15 May 1955; English translation: NEW TIMES, 1955, No. 21, supplement; AMERICAN JOURNAL OF INTERNATIONAL LAW, Vol. 49 (1955), Suppl., pages 194-199; German translation: Meissner, OSTPAKT-SYSTEM (Frankfurt, Berlin, 1955), pages 204-206.
10. Article 4: "In the event of armed attack in Europe on one or more of the Parties to the Treaty by any State or group of States, each of the Parties . . . shall . . . come to the assistance of the State or States attacked with all such means as it deems necessary, including armed force."
11. Article 1: "The Contracting Parties undertake, in accordance with the Charter of the United Nations Organization to refrain in their international relations from the threat or use of force, and to settle their international disputes peacefully, and in such manner as will not jeopardize international peace and security."
12. See Tunkin, G. I. SOVETSKOE GOSUDARSTVO I PRAVO (Soviet State and Law) (Moscow) 1956, No. 1, pages 101-102.
13. *Cf.* Articles 10, 20 and 25 of the Constitution.

Association Members Offered an Expanded Life Insurance Program

Since the first week of October until November 15, 1957, American Bar Association members under 46 years of age may enroll in the Group Life Insurance Plan sponsored by the American Bar Association Endowment, *without a medical statement.*

In addition to this NON-MEDICAL OPEN PERIOD the Endowment has also announced that more coverage is available than before at no increase in premium. Up to ten thousand dollars' worth of life insurance, depending on age (see schedule of benefits), replaces the old coverage of $6,000. All members under 40 years of age will enjoy an increase, in variable amounts, at the same low premium of only $20. These combined new features now offer to lawyers one of the finest insurance programs available anywhere. It is expected that the present enrollment of over 22,000 will be increased by 5000 new members who will rush their applications back to the Endowment before the November 15 deadline. After that date it will be necessary for everyone joining to satisfy the underwriter's requirement and submit evidence of insurability.

The tremendous success enjoyed by the $20-a-Year Plan and the wide spread of risk has made it possible not only to accept members on a non-medical basis but also to increase the coverage at no additional charge. The New York Life Insurance Company has also advised the Endowment that the experience realized has again permitted them to guarantee the low $20 premium for another policy year.

The insurance purchased during the open period as well as the additional coverage that will be enjoyed by the present members under 40 will become effective at 12:01 A.M. December 1, 1957.

Members in the states of Texas and Ohio are still not eligible to enroll in the plans due to various state statutes.

The Endowment is however, most hopeful that they will be permitted to offer this low-cost group insurance to Ohio members in the near future.

There are many desirable features offered to members in the $20-a-Year Plan:

1. No medical requirements for members under 46 years if they apply prior to November 15, 1957.
2. Waiver of premium while totally disabled.
3. Conversion privileges.
4. Option at age 50 to apply for coverage under the companion 50-Plus Plan for an additional $5,000 insurance without evidence of insurability.
5. Extremely low premium of $20.00.
6. Easy to apply—no red tape.

The Endowment has built a reputation for handling claims in a fast and efficient manner. During the past two years over $300,000 in claim benefits have been paid to beneficiaries. The American Bar Foundation has been designated by many members as partial beneficiary. The Endowment has also made grants of $20,000 and $40,000 to the Foundation which are used to help finance research work and other projects in the legal field.

The Endowment has offices in the American Bar Center in Chicago and maintains a competent, full-time staff to handle the many details involved in serving their members. They have availed themselves of recently installed electronic billing equipment in order to render more efficient service to their members. The enrollment has grown far and wide and currently there are participants in the forty-eight states, the District of Columbia, Arabia, Alaska, Canada, Canal Zone, Chile, Columbia, Cuba, England, France, Guam, Guatemala, Hawaii, Japan, Mexico, Puerto Rico, Switzerland and Venezuela. All members of the American Bar Association are invited to apply for insurance (except members in Ohio and Texas) in both the $20-a-Year Plan and the 50-Plus Plan. However, only members under 46 may enroll without evidence

(Continued on page 960)

If Death Strikes at This Age	New Schedule of Benefits	Old Schedule of Benefits
25 and under	$10,000	$6,000
26	9,500	5,800
27	9,000	5,600
28	8,500	5,400
29	8,000	5,200
30	7,500	5,000
31	7,000	4,800
32	6,500	4,600
33	6,000	4,400
34	5,500	4,200
35	5,000	4,000
36	4,600	3,800
37	4,200	3,600
38	3,800	3,400
39	3,400	3,200
40	3,000	3,000
41	2,800	2,800
42	2,600	2,600
43	2,400	2,400
44	2,200	2,200
45	2,000	2,000
46	1,900	1,900
47	1,800	1,800
48	1,700	1,700
49	1,600	1,600
50	1,500	1,500
51	1,400	1,400
52	1,300	1,300
53	1,200	1,200
54	1,100	1,100
55	1,000	1,000

Review of Recent Supreme Court Decisions

George Rossman
EDITOR-in-CHARGE

Banks and Banking . . . *money orders*

Morey v. *Doud*, 354 U. S. 457, 1 L. ed. 2d 1485, 77 S. Ct. 1344, 25 U. S. Law Week 4551. (No. 475, decided June 24, 1957.) *On appeal from the United States District Court for the Northern District of Illinois. Affirmed.*

At issue here was an Illinois statute requiring currency exchanges selling money orders to be licensed and registered. A specific exception was made of money orders issued by the American Express Company. The Court held that the exception was an unconstitutional deprivation of equal protection of the laws.

The suit was brought by a partnership that contemplated selling "Bondified" money orders through agents in Illinois retail drug and grocery stores. The suit was brought in the District Court seeking an injunction against the enforcement of the Illinois Community Currency Exchanges Act, which contains the provision in question. The Act provides for a comprehensive scheme of regulating currency exchanges, requires payment of a license fee, and requires exchanges to post surety bonds of between $3,000 and $25,000 and to have an insurance policy of $2,500 to $35,000. The activities of the appellees concededly came under the provisions of this statute as a firm "engaged in the business of selling or issuing money orders". The state contended that the legislative exemption of American Express orders was reasonable because of the unquestioned solvency and high financial standing of the American Express Company.

The Supreme Court affirmed the District Court's order granting the relief sought, speaking through Mr. Justice BURTON. The Court said that, taking all the factors into consideration, the effect of the discrimination here was to create a closed class by singling out American Express money orders. The purpose of the statute was to provide continuing protection to the public, the Court said, but the blanket exemption of American Express would continue to leave it unregulated whether or not American Express Company retains its present characteristics.

Mr. Justice BLACK, dissenting, argued that the exemption "of a company of known solvency from a solvency test applied to others of unknown financial responsibility can hardly be called 'invidious'", and the equal protection clause goes no further than prohibiting "invidious discrimination".

Mr. Justice FRANKFURTER, joined by Mr. Justice HARLAN, also dissented, arguing that the state could constitutionally have gone into the business of issuing money orders and that it could therefore have had the service conducted by the American Express Company. This opinion viewed the American Express Company as "decisively different" from the regulated firms, just as the Post Office and Western Union money orders, which are also exempted, are different.

The case was argued by William C. Wines for the appellants and by G. Kent Yowell and John J. Yowell for the appellees.

Constitutional Law . . . *obscenity*

Roth v. *United States*, *Alberts* v. *California*, 354 U. S. 476, 1 L. ed. 2d 1498, 77 S. Ct. 1304, 25 U. S. Law Week 4539. (Nos. 582 and 61, decided June 24, 1957.) *No. 582 on writ of certiorari to the United States Court of Appeals for the Second Circuit. Affirmed. No. 61 on appeal from the Superior Court of the State of California, Los Angeles County, Appellate Department. Affirmed.*

These cases dealt with the always-difficult problem of balancing obscenity laws against the requirements of the First and Fourteenth Amendments. In the *Roth* case, the petitioner was convicted upon four counts of mailing obscene material in violation of the federal obscenity statute. In *Alberts*, the appellant was convicted of keeping for sale obscene books and writing and publishing an obscene advertisement of them, in violation of a state statute.

The Court upheld the convictions in an opinion written by Mr. Justice BRENNAN. The Court declared that the "dispositive question is whether obscenity is utterance within the area of protected speech and press", and it demonstrated that historically, the "unconditional phrasing of the First Amendment was not intended to protect every utterance". The Court said that it made no difference that the statutes in question here punished incitation to impure sexual *thoughts*, not shown to be related to any overt antisocial conduct. The Court said that the proper standard for defining obscenity had been used in these cases: "whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest". Lack of precision is not offensive to the requirements of due process, the

Reviews in this issue by Rowland Young.

Court noted, and this test gives "adequate warning of the conduct proscribed and mark[s] ... 'boundaries sufficiently distinct for judges and juries fairly to administer the law. . . .'"

The CHIEF JUSTICE, in a concurring opinion, said that he would have limited the decision to the facts. The defendants, he declared "were plainly engaged in the commercial exploitation of the morbid and shameful craving for materials with prurient effect. I believe that the State and Federal Governments can constitutionally punish such conduct. That is all these cases present to us, and that is all we need to decide."

Mr. Justice HARLAN wrote an opinion concurring in the result in the *Alberts* case but dissenting in the *Roth* case. This opinion complained that the two cases presented much different factors and much different obscenity statutes. The opinion expressed the fear that the "broad manner in which the Court has decided these cases will tend to obscure the peculiar responsibilities resting on state and federal courts in this field and encourage them to rely on easy labeling and jury verdicts as a substitute for facing up to the tough individual problems of constitutional judgment involved in every obscenity case". The opinion drew a distinction between federal and state authority in the field, and was willing to uphold the California court's decision, since the field was one primarily of state concern. It was one thing, this opinion said, for a certain book to be banned in one state; it was quite another to have the book banned throughout the whole country.

Mr. Justice DOUGLAS, joined by Mr. Justice BLACK, wrote a dissenting opinion which argued that the test of obscenity approved by the Court gave the censor free range over a vast domain, and objected to the infliction of punishment for thoughts provoked, not overt acts or antisocial conduct. This was a clear violation of the First Amendment the dissent argued, closing with an expression of "the same confidence in the ability of our people to reject noxious literature as I have in their capacity to sort out the true from the false in theology, economics, politics, or any other field."

The cases were argued by David von G. Albrecht and O. John Rogge for the petitioner in No. 582, by Roger D. Fisher for the respondent in No. 582, by Stanley Fleishman for the appellant in No. 61, and by Fred N. Whichello and Clarence A. Linn for the appellee in No. 61.

Constitutional law . . . *obscenity*

Kingsley Books, Inc. v. *Brown*, 354 U. S. 436, 1 L. ed. 2d 1469, 77 S. Ct. 1325, 25 U. S. Law Week 4557. (No. 107, decided June 24, 1957.) *On appeal from the Court of Appeals of New York. Affirmed.*

Here a slightly different majority of five Justices upheld a New York statute which provided for the enjoining of sales of obscene books.

The statute, Section 22-a of the New York Code of Criminal Procedure, authorizes the chief executive of a municipality to invoke a "limited injunctive remedy" against the distribution of material found to be obscene and to obtain an order for the seizure of the condemned publications.

The appellant was charged with displaying obscene paper-back booklets entitled "Nights of Horror". The injunctive procedure was invoked, the appellants were enjoined *pendente lite* from distributing the booklets, and a judge sitting in equity found that the booklets were clearly obscene and ordered their destruction. He refused to enjoin the sale and distribution of later issues on the ground that such a ruling would impose an unreasonable prior restraint upon freedom of the press. The appeal was taken on the sole ground that the injunctive process was a violation of due process, no assault being made on the statute insofar as it outlaws obscenity. The New York Court of Appeals affirmed.

Mr. Justice FRANKFURTER, speaking for the Supreme Court, affirmed. The Court held that the state was entitled to use all its "weapons in the armory of the law" to protect its people against pornography. "If New York chooses to subject persons who disseminate obscene 'literature' to criminal prosecution and also to deal with such books as deodands of old, or both, it is not for us to gainsay its selection of remedies." In the Court's view, there was no more restraint upon booksellers under the New York statute than under the type of statutes at issue in the *Roth* and *Alberts* cases, *supra*. "Instead of requiring the bookseller to dread that the offer for sale of a book may without prior warning subject him to a criminal prosecution with the hazard of imprisonment, the civil procedure assures him that such consequences cannot follow unless he ignores a court order specifically directed to him. . . ." the Court observed.

In a dissenting opinion, the CHIEF JUSTICE argued that the New York law in effect put the book on trial and that the statute lacked any standard for judging the book in context. "It is the manner of use that should determine obscenity" he said. "It is the conduct of the individual that should be judged, not the quality of art or literature. To do otherwise is to impose a prior restraint and hence to violate the Constitution."

Mr. Justice DOUGLAS, joined by Mr. Justice BLACK, wrote a dissenting opinion which contended that the injunction *pendente lite* could issue *ex parte*, without any hearing on the issue of obscenity. The opinion also objected that the statute violated the First Amendment by permitting use of an injunction to restrain the distribution of all the condemned literature. "Free speech is not to be regulated like diseased cattle and impure butter" the dissent declared.

Mr. Justice BRENNAN also wrote an opinion dissenting on the ground that the New York statute made no provision for trial by jury.

The case was argued by Emanuel Redfield for the appellants and by Seymour B. Quel for the appellee.

Constitutional law . . .
treaties

Wilson v. *Girard*, *Girard* v. *Wilson*, 354 U. S. 524, 1 L. ed. 2d 1544, 77 S. Ct. —, 26 U. S. Law Week 4001. (Nos. 1103 and 1108, decided July 11, 1957.) *On writs of certiorari to the United States Court of Appeals for the District of Columbia Circuit. No. 1103, reversed. No. 1108, affirmed.*

In this decision, the Court held that there was no constitutional bar to the handing over to Japanese authorities, pursuant to agreement between the United States and Japan, of an American soldier accused of causing the death of a Japanese woman.

The case, which created a storm of controversy both here and in Japan, was decided by the Court in an extraordinary session convened after the Court had adjourned its regular term.

Girard, the soldier, was ordered to guard a machine gun and personal gear on a range area at a military base in Japan. A number of Japanese civilians were present on the range retrieving expended cartridge cases. Girard fired an expended .30 calibre cartridge case from a grenade launcher, which struck and killed one of the Japanese. Both the United States and Japan claimed the right to try Girard, the United States upon the ground that he was acting "in the performance of official duty", Japan claiming that it had proof that he had gone beyond the scope of his official duty. Under the terms of the so-called "Protocol Agreement" between the United States and Japan, the United States had "primary jurisdiction" to try offenses arising out of any act or omission done in the performance of official duty. The Protocol Agreement was made pursuant to the terms of an earlier Administrative Agreement which in turn was authorized by the Security Treaty between the United States and Japan signed September 8, 1951. The Administrative Agreement became effective on the same date as the Treaty and was considered by the Senate before that body consented to the Treaty. A joint committee of the two countries, set up according to the terms of the Administrative Agreement, was unable to agree on which nation should try Girard and the matter was finally referred to higher authorities. The Secretary of State and the Secretary of Defense ultimately determined that the United States would waive jurisdiction.

Girard brought this action for habeas corpus in the District Court, which denied the writ but granted declaratory relief and enjoined his delivery to the Japanese. The Supreme Court granted certiorari under 28 U.S.C. §1254 (1).

The Court's *per curiam* opinion set forth the facts and the background of the international agreements covering the case. The Court pointed out that Japan's cession of jurisdiction to the United States to try American military personnel was conditioned by an article of the Protocol which provided that "The authorities of the State having the primary right shall give sympathetic consideration to a request from the authorities of the other State for a waiver of its right in cases where the other State considers such waiver to be of particular importance."

The Court said that the narrow issue was whether the Constitution or legislation subsequent to the Security Treaty prohibited the carrying out of this provision of the Protocol. It could find none, it said, and "In the absence of such [constitutional or statutory barriers], the wisdom of the arrangement is exclusively for the determination of the Executive and Legislative branches."

Mr. Justice DOUGLAS took no part in the consideration or decision of the case.

The cases were argued by Solicitor General Rankin for the petitioners in No. 1103 and respondents in No. 1108 and by Joseph S. Robinson and Earl J. Carroll for the respondent in No. 1103 and petitioner in No. 1108.

Corporations . . .
stockholder's derivative suits

Smith v. *Sperling*, 354 U. S. 91, 1 L. ed. 2d 1205, 77 S. Ct. 1112, 25 U. S. Law Week 4436. (No. 316, decided June 10, 1957.) *On writ of certiorari to the United States Court of Appeals for the Ninth Circuit. Reversed.*

This was a stockholder's derivative suit, brought in the federal court on diversity grounds, based on alleged fraudulent wastage of Warner Brothers Pictures, Inc., for the benefit of Sperling, owner of defendant United States Pictures, Inc. The plaintiff was a citizen of New York, the defendant directors were citizens of California, and the companies involved were Delaware corporations. The complaint joined Warner Brothers as a defendant. The issue here was the contention that, since the cause of action belonged to the corporation, the corporation was not "antagonistic" to the stockholder and Warner Brothers should be realigned as a plaintiff. This would have destroyed diversity of citizenship since there would then be Delaware corporations on both sides. The District Court realigned Warner Brothers as a plaintiff and dismissed the bill. The Court of Appeals affirmed.

Mr. Justice DOUGLAS, speaking for the Supreme Court, reversed. The gist of the District Court's findings was that, since there was no fraud on the part of the directors but only an exercise of independent business judgment, the management was not antagonistic to the financial interests of the corporation. The Supreme Court declared that this went to the merits, not the question of jurisdiction. The proper course, said the Court, was to determine the issue of antagonism "on the face of the pleadings and by the nature of the controversy". "Whenever the management refuses to take action to undo a business transaction or whenever, as in this case, it so

solidly approves it that any demand to rescind would be futile, antagonism is evident. The cause of action, to be sure, is that of the corporation. But the corporation has become through its managers hostile and antagonistic to the enforcement of the claim." The Court added that collusion to satisfy the jurisdictional requirements could always be shown and would always defeat jurisdiction.

Mr. Justice FRANKFURTER wrote a dissenting opinion in which Mr. Justice BURTON, Mr. Justice HARLAN and Mr. Justice WHITTAKER joined. (See *infra.*)

The case was argued by Herman H. Levy for petitioner and by Eugene D. Williams for respondent.

Corporations . . . *stockholders' derivative suits*

Swanson v. *Traer,* 354 U. S. 114, 1 L. ed. 2d 1221, 77 S. Ct. 1116, 25 U. S. Law Week 4438. (No. 149, decided June 10, 1957.) *On writ of certiorari to the United States Court of Appeals for the Seventh Circuit. Reversed and remanded.*

The problem here was similar to that in *Smith* v. *Sperling, supra.*

The plaintiff-stockholders were citizens of Nevada and stockholders in the Chicago, North Shore and Milwaukee Railway, an Illinois corporation. They filed a complaint charging a conspiracy to defraud the Railway Company by a series of sales of transit properties to the Company. The Company was made a defendant along with individuals who are citizens of Illinois, a Delaware corporation and an Indiana corporation. The suit was filed in the District Court on the basis of diversity of citizenship. The District Court dismissed on the ground that the facts did not disclose the type of exceptional case in which a stockholder may dispute the management and take the reins of the corporate litigation in his own hands. The Court of Appeals did not reach that question since it concluded that there was no such hostility to the plaintiff as to make it "antagonistic", and accordingly realigned the corporation as a party plaintiff. This destroyed the diversity and the Court dismissed the case.

The Supreme Court reversed, speaking through Mr. Justice DOUGLAS. The Court relied upon the same reasoning as that in its decision in the *Sperling* case. It remanded for a determination whether local law permitted a suit by a stockholder on behalf of his corporation—a question, in diversity suits, left to local law under the *Erie* v. *Tompkins* doctrine.

The case was argued by James E. Doyle for the petitioners and by James E. S. Baker and Marland Gale for the respondents.

Swanson v. *Traer, Smith* v. *Sperling,* 354 U. S. 98, 1 L. ed. 1212, 77 S. Ct. 1119, 25 U. S. Law Week 4439. (Nos. 149 and 316, decided June 10, 1957.)

The dissenting opinion of Mr. Justice FRANKFURTER, with whom Mr. Justice BURTON, Mr. Justice HARLAN and Mr. Justice WHITTAKER concurred, discussed at some length the history of the requirements for diversity jurisdiction in stockholders' suits, beginning with *Doctor* v. *Harrington,* 196 U. S. 579. The opinion complained that the Court's decision overturned the precedents of half a century and greatly expanded the diversity jurisdiction. In this view, *Smith* v. *Sperling* should have been affirmed, and *Swanson* v. *Traer* remanded to give the plaintiffs an opportunity to substantiate their allegations, which implied hostility on the part of the whole board of directors of the corporation.

Courts . . . *appealability*

Carroll v. *United States,* 354 U. S. 394, 1 L. ed. 2d 1442, 77 S. Ct. 1332, 25 U. S. Law Week 4569. (No. 571, decided June 24, 1957.) *On writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit. Reversed.*

This case dealt with the appealability of the order of a federal district court suppressing evidence alleged to have been illegally seized. The Court held that the Government could not appeal the suppression order.

The petitioners were indicted in the District of Columbia, charged with violations of the local lottery laws and for conspiracy to carry on a lottery. Each filed a pretrial motion for suppression of evidence seized on his person at the time of the arrest. The District Court granted the motions on the ground that probable cause had been lacking for the issuance of the arrest warrants. The Government appealed the suppression order, informing the Court of Appeals that without the evidence seized at the time of the arrests, it would be forced to have the indictments dismissed. The Court of Appeals sustained its jurisdiction to hear the appeal and reversed the District Court on the merits.

The CHIEF JUSTICE, speaking for a unanimous Supreme Court, reversed. The Court noted that federal appellate jurisdiction is dependent upon authority expressly conferred by statute and, in federal jurisprudence, appeals by the Government are exceptional and are not favored. There may be certain orders relating to a criminal case that have sufficient independence to warrant treatment as plenary orders, thus appealable under 28 U.S.C. §1291, the Court said, but this was not such an order.

The Court of Appeals had rested its jurisdiction on the basis of statutory provisions peculiar to the District of Columbia, but the Court, reviewing the history of the statutes, disagreed with the Court of Appeals' interpretation.

The case was argued by Curtis P. Mitchell for the petitioners and by Harold H. Greene for the respondent.

Criminal law . . . *prompt arraignment*

Mallory v. *United States,* 354 U. S. 449, 1 L. ed. 2d 1479, 77 S. Ct. 1356, 25 U. S. Law Week 4560. (No. 521, decided June 24, 1957.) *On writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit. Reversed and remanded.*

This decision reversed a convic-

tion because the petitioner had been held more than twenty hours before he was taken before a federal commissioner for arraignment. The Court held that the requirements of Rule 5(a) of the Federal Rules of Criminal Procedure had not been met.

The petitioner, suspected of rape, was arrested between 2:00 and 2:30 P.M. on April 8, 1954. He was taken to police headquarters and questioned for about forty-five minutes that afternoon. About eight o'clock that evening he was given a lie detector test, and, after almost an hour and a half of steady interrogation, he confessed. The police made no effort to locate a commissioner until after ten o'clock that evening and then failed to reach one. The petitioner consented to an examination by a deputy coroner, who noted no indicia of physical or psychological coercion. The questioning was then resumed and between eleven-thirty and twelve-thirty, the prisoner dictated his confession to a typist. He was not taken before a commissioner until the following morning. When brought to trial, the petitioner was convicted and sentenced to death. The Court of Appeals affirmed, one judge dissenting.

The Supreme Court reversed, speaking through Mr. Justice FRANKFURTER. The Court held that the treatment given the prisoner did not meet the requirement of the Federal Rules of Criminal Procedure that he be brought "without unnecessary delay before the nearest available commissioner". The rule was designed to circumvent "unwarranted detention [that] led to tempting utilization of intensive interrogation, easily gliding into the evils of 'the third degree'" the Court declared. While the duty to arraign "without unnecessary delay" does not call for mechanical obedience, the Court said, in this case petitioner was arrested in the early afternoon and was detained at headquarters within the vicinity of numerous committing magistrates. He was not told of his rights to counsel or to remain silent. "Not until he had confessed, when any judicial caution had lost its purpose, did the police arraign him" the Court observed.

The case was argued by William B. Bryant for the petitioner and by Edward L. Barrett, Jr., for the respondent.

Criminal law . . . *sedition*

Yates v. *United States, Schneiderman* v. *United States, Richmond* v. *United States,* 354 U. S. 298, 1 L. ed. 2d 1356, 77 S. Ct. 1064, 25 U. S. Law Week 4475. (Nos. 6, 7 and 8, decided June 17, 1957.) *On writs of certiorari to the United States Court of Appeals for the Ninth Circuit. Reversed and remanded.*

In this decision, the Court reversed the convictions of fourteen West Coast Communists for conspiracy to violate the Smith Act. The defendants were charged with conspiring (1) to advocate and teach the duty and necessity of overthrowing the Government by force and violence and (2) to organize, as the Communist Party of the United States, a society of persons who so advocate and teach, with the intent of causing the overthrow of the Government. In reviewing the convictions, which had been affirmed by the Courts of Appeals, the Supreme Court considered only four of the petitioners' contentions: (1) that the term "organize" as used in the statute was erroneously construed by the lower courts; (2) that the trial court's instructions to the jury erroneously excluded from the case the issue of "incitement to action"; (3) that the evidence was so insufficient as to require a directed verdict of acquittal; (4) that one petitioner's (Schneiderman's) conviction was barred by the Supreme Court's judgment in a prior case, under the doctrine of collateral estoppel. The Court's opinion was written by Mr. Justice HARLAN.

The petitioners contended that the word "organize" means *to establish, found,* or *bring into existence,* and from this they argued that, since the Communist Party of the United States was organized in 1945, the indictment, returned in 1951, was barred by the three-year statute of limitations. The Government argued that the word "organize" connotes a continuing process that goes on throughout the life of the organization. The Court was unpersuaded by the arguments of either side as to which meaning Congress had intended, and it chose the narrower meaning, applying the familiar rule that criminal statutes are to be strictly construed. This meant that the statute of limitations had run on the "organizing" charge and that that part of the indictment should have been withdrawn from the jury's consideration.

The petitioners also argued that the instructions to the jury should have made it clear that advocacy of forcible overthrow as a mere abstract doctrine was protected by the First Amendment, and accordingly, that the Smith Act must be read as proscribing only advocacy that incites to illegal action. At the trial, the Government had also requested a charge framed in terms of "incitement" although it later contended that the true line was between advocacy as such and mere discussion of violent overthrow as an abstract theory. The Court spent considerable time in the examination of this problem, which rested on the proper interpretation of *United States* v. *Dennis,* 341 U. S. 494. The Court concluded that both the lower courts misconceived the teaching of that opinion. "The essential distinction" it was said, "is that those to whom the advocacy is addressed must be urged to *do* something now or in the future, rather than merely to *believe* in something." At best, the Court declared, the trial court's instructions were equivocal.

As for the question of the sufficiency of the evidence, the Court held that the evidence against five of the petitioners was so clearly insufficient that their acquittal should be ordered. As for the other nine, however, the Court found that there was enough in the record from which a jury might conclude that

they had engaged in the sort of advocacy prohibited by the statute. The Court directed a new trial for these nine.

Schneiderman, one of the petitioner's sought to invoke the doctrine of collateral estoppel by judgment, arguing that an earlier Supreme Court decision in a denaturalization proceeding in which he was the prevailing party entitled him to an acquittal. The holding in that case, in effect, had been that the Communist Party was not engaged in "agitation and exhortation calling for present violent action." The Court replied that that decision had merely dealt with the character of the Party in 1927 and furthermore that the issues in the present case were much different, and were "so remote from the issues [in the earlier case] as to justify their exclusion from evidence in the discretion of the trial judge."

Mr. Justice BURTON concurred in the result and the opinion of the Court except as to its interpretation of the term *organize*.

Mr. Justice BRENNAN and Mr. Justice WHITTAKER took no part in the consideration or decision of the case.

Mr. Justice BLACK, joined by Mr. Justice DOUGLAS, wrote an opinion concurring in part and dissenting in part. This opinion argued that all of the defendants should have been ordered acquitted. The approach here was that the First Amendment prohibited interference with freedom of speech "whether or not such discussion incites to action, legal or illegal", citing Jefferson to the effect that "it is time enough for the rightful purposes of civil government, for its officers to interfere when principles break out into overt acts against peace and good order. . . ." The opinion also declared that the evidence against the nine defendants for whom a new trial was ordered was so flimsy that they should not be retried.

Mr. Justice CLARK, also dissenting, took the opposite position and urged affirmance of the convictions.

The case was argued by Ben Margolis for the petitioners in No. 6, by Robert W. Kenny for the petitioner in No. 7, by Augustin Donovan for the petitioners in No. 8 and by Philip R. Monahan for respondent.

Divorce . . . *alimony*

Vanderbilt v. *Vanderbilt*, 354 U. S. 416, 1 L. ed. 2d 1456, 77 S. Ct. 1360, 25 U. S. Law Week 4563. (No. 302, decided June 24, 1957.) *On writ of certiorari to the Court of Appeals and the Supreme Court of New York. Affirmed.*

In this case, Cornelius Vanderbilt, Jr., had obtained an *ex parte* Nevada divorce from his wife in 1952. Mrs. Vanderbilt was not served and did not appear before the Nevada court. In 1954, she began this action in New York, the state of her domicile, praying for separation and for alimony. The New York court did not have personal jurisdiction over the husband, but it sequestered his property within the state. He appeared specially, contending that the full faith and credit clause required New York to treat the Nevada divorce as if it had ended the marriage and had destroyed any duty of support he owed his wife. The New York court held that the Nevada divorce was valid and had terminated the marriage, but it entered an order directing the husband to make support payments to the wife.

The Supreme Court, speaking through Mr. Justice BLACK, affirmed. Although the situation was different from that in *Estin* v. *Estin*, 334 U. S. 541, where the wife had obtained a New York separation decree providing for her support before her husband obtained his *ex parte* Nevada divorce, the Court said that the difference was "not material". Since the wife was not subject to its jurisdiction, the Nevada court had no power to extinguish any right of support she may have had under New York law. "Therefore, the Nevada decree", the Court said, "to the extent it purported to affect the wife's right to support, was void and the Full Faith and Credit Clause did not obligate New York to give it recognition."

The CHIEF JUSTICE took no part in the consideration or decision of the case.

Mr. Justice FRANKFURTER wrote a dissenting opinion which argued that the point that the Court treated as "not material" was the crucial point in the *Estin* decision. This opinion could see no reason to split the cause of action and allow Nevada to grant a divorce but deny it the right to deny alimony. The opinion traces in some detail what it calls "the Court's tortuous course of constitutional adjudication relating to dissolution of the marriage status".

Mr. Justice HARLAN also wrote a dissenting opinion which argued that the question was not whether the Nevada decree was void for lack of due process, but whether it bound New York under the full faith and credit clause. The opinion suggested that if Mrs. Vanderbilt was a domiciliary of New York at the time of the divorce, New York should not be compelled to disregard its own policy in favor of the law of Nevada on the question of support rights. In this view, the domicile of the absent spouse at the time of the *ex parte* divorce would be crucial.

The case was argued by Sol A. Rosenblatt for petitioner and by Monroe J. Winsten for respondents.

Government employees . . . *loyalty*

Service v. *Dulles*, 353 U. S. 363, 1 L. ed. 2d 1403, 77 S. Ct. 1152, 25 U. S. Law Week 4494. (No. 407, decided June 17, 1957.) *On writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit. Reversed and remanded.*

In this case, the Court held invalid the 1951 discharge of a Foreign Service Officer because of doubts of his loyalty. The Court rested its decision upon a holding that Mr. Acheson, the Secretary of State at the time, was bound by loyalty regulations in effect at the

time even though he had statutory authority to use his "absolute discretion" in firing employees suspected of disloyalty.

The loyalty of the petitioner was first questioned in 1945 when he became involved in the so-called *Amerasia* incident, but he was accorded successive clearances by the State Department in 1945, 1946, 1947, and 1949. The 1949 clearance was reconsidered by order of the Loyalty Review Board on "post-audit", and the petitioner was again cleared. This finding was approved by the Deputy Under Secretary of State. On another post-audit, the Loyalty Review Board considered the case under a more stringent loyalty standard put into effect in 1951, again the result was favorable to the petitioner and again the Deputy Under Secretary of State approved. However, on a further post-audit, the Board found that there was reasonable doubt as to the petitioner's loyalty and it advised the Secretary of State to terminate his service. The Secretary did so, as he stated upon affidavit, in the belief that he was legally free to exercise his own judgment and in the exercise of that judgment.

This was an action brought by the petitioner seeking a declaratory judgment that this discharge was invalid. While the case was pending before the District Court, the Supreme Court decided *Peters* v. *Hobby*, 349 U. S. 331, holding that the Board had no authority to review, on post-audit, determinations *favorable* to the employee. The District Court accordingly held the last finding of the Board null and void, but it granted summary judgment to the Government because it construed the Secretary's action in discharging the petitioner an exercise of the "absolute discretion", granted the Secretary by the so-called McCarran rider, to "terminate the employment of any officer or employee of the Department of State or of the Foreign Service of the United States whenever he shall deem such termination necessary or advisable in the interests of the United States. . . ." The Court of Appeals affirmed.

Mr. Justice HARLAN delivered the opinion of the Supreme Court which reversed and remanded. The Court relied upon *Accardi* v. *Shaughnessy*, 347 U. S. 260, for the holding that "regulations validly prescribed by a government administrator are binding upon him as well as the citizen . . . even when the administrative action under review is discretionary in nature". The Court thought that it was clear that the loyalty review regulations promulgated by the Secretary were applicable to McCarran rider discharges as well as to discharges effected pursuant to the Loyalty-Security program. The regulations themselves, the fact that the proceedings in this case were clearly conducted under the regulations, as well as statements by the Department of State and the President left no doubt of this, the Court said.

The Court then turned to the Regulations and found that the discharge was inconsistent with both the 1949 and 1951 regulations. Under the 1949 regulations, the Secretary could not dismiss the petitioner until the Deputy Under Secretary had recommended such dismissal. Under the 1951 regulations, the Secretary could order termination of employment only on the merits, after a review of the complete record.

Mr. Justice CLARK took no part in the consideration or decision of the case.

The case was argued by C. Edward Rhetts for the petitioner and by Donald B. MacGuineas for the respondent.

Taxation . . . *gambling*

United States v. *Calamaro*, 354 U. S. 351, 1 L. ed. 2d 1394, 77 S. Ct. 1138, 25 U. S. Law Week 4491. (No. 304, decided June 17, 1957.) *On writ of certiorari to the United States Court of Appeals for the Third Circuit. Affirmed.*

In this case, the Court held that a "pick-up" man in the numbers game is not "engaged in receiving wagers" within the meaning of the Internal Revenue Code. The Court agreed with the Court of Appeals that the respondent was not subject to the annual $50 occupational tax levied upon persons who conduct wagering pools or lotteries.

The respondent was convicted of failure to pay the tax and was fined $1000 by the District Court. The Court of Appeals reversed by a divided court.

The Supreme Court affirmed, speaking through Mr. Justice HARLAN. The decision distinguished a "pick-up" man, who collects wagering slips, from the "writer", who does the actual selling of the slips to the public, and the "banker", who deals in the numbers and against whom the player bets. The Court reasoned that the "pick-up" man was merely a messenger, carrying the betting slips from the writer to the banker. The statute applied, the Court pointed out, to persons "engaged in receiving wagers", and it quoted with approval the Court of Appeals' reasoning that there was a "very real difference between a wager and a record of a wagering transaction. It is the banking record and not the wager which the pick-up man receives from the writer and transmits to the bank. The pick-up man no more receives wagers than a messenger, who carries records of customer transactions from a branch bank to a central office, receives deposits".

Mr. Justice WHITTAKER took no part in the consideration or decision of the case.

Mr. Justice BURTON wrote a dissenting opinion which took the position that the statutory words imposing the tax on "each person . . . who is engaged in receiving wagers for or on behalf of any person so liable [for the excise tax]" readily included the pick-up man. This opinion also disagreed with the Court on its finding that there was no support for the Government's position in the legislative history of the statute.

The case was argued by Leonard

(Continued on page 950)

ANNOUNCEMENT

of the

1958 Essay Contest

Conducted by the

AMERICAN BAR ASSOCIATION

Pursuant to the terms of the bequest of Judge Erskine M. Ross, deceased.

INFORMATION FOR CONTESTANTS

Time When Essay Must Be Submitted: On or before April 1, 1958.

Amount of Prize: Two Thousand Seven Hundred Fifty Dollars.

Subject To Be Discussed:

"TO WHAT EXTENT SHOULD ADMINISTRATIVE AGENCIES EXERCISE JUDICIAL POWERS?"

Eligibility:

The contest will be open to all members of the Association in good standing, including new members elected prior to March 1, 1958 (except previous winners, members of the Board of Governors, officers and employees of the Association), who have paid their annual dues to the Association for the current fiscal year in which the essay is to be submitted.

No essay will be accepted unless prepared for this contest and not previously published. Each entryman will be required to assign to the Association all right, title and interest in the essay submitted.

Instructions:

All necessary instructions and complete information with respect to number of words, number of copies, footnotes, citations, and means of identification, may be secured upon request to the

ROSS ESSAY CONTEST

AMERICAN BAR ASSOCIATION

1155 East Sixtieth Street **Chicago 37, Illinois**

What's New in the Law

The current product of courts, departments and agencies

George Rossman • EDITOR-IN-CHARGE

Richard B. Allen • ASSISTANT

Civil Practice . . . *relief from judgment*

A dining-car waiter whose spasmodic torticollis miraculously disappeared after he won a $12,500 award from the Santa Fe in a Federal Employers' Liability Act case has been allowed to keep his judgment by the Court of Appeals for the Ninth Circuit, despite the Court's skepticism about the genuineness of the injury.

After judgment and after time for a motion for a new trial had expired, the defendant moved under Rule 60 (b) of the Federal Rules of Civil Procedure to set aside the judgment on the grounds that it had been obtained by fraud, misrepresentation and other misconduct. To support this, it presented motion pictures showing that the plaintiff's head-twitching, prominently displayed before and during the trial, had been more pronounced in the courtroom than out and that it had disappeared after the trial. The trial judge denied the motion.

The Ninth Circuit, averring that Rule 60(b) should be liberally construed, nevertheless felt that it could not disturb the trial judge's ruling in the face of the lack of clear and convincing proof that the judgment was in fact obtained by fraud or misrepresentation. It said that "litigation neurosis" is accepted as a medical fact, particularly by "practitioners of psychosomatic medicine most closely associated with forensic medicine".

The Court conceded that had the trial judge decided the motion in favor of the defendant, it would have affirmed also, but it emphasized that such a motion is addressed to the sound discretion of the trial court which should not ordinarily be disturbed. Concluded the Court: "Our research fails to disclose a single case in this Circuit where this Court has reversed a trial judge on a matter of this kind. We should not commence innovation on the factual basis of this case."

(Atchison, Topeka & Santa Fe Railway Company v. *Barrett,* United States Court of Appeals, Ninth Circuit, June 27, 1957, Barnes, J.)

Copyrights . . . *infringement*

In an unusual copyright infringement case the Court of Appeals for the Seventh Circuit, somewhat reluctantly and with one judge dissenting, has affirmed a special master's and district court's decision that two books written by a Lincoln-Civil War expert were not plagiarized by a free-lance magazine author's article in *True* magazine.

The plaintiff, Otto Eisenschiml, is a recognized authority, particularly in the specialized field of Lincoln's death, and his two books—*Why Was Lincoln Murdered?* and *In the Shadow of Lincoln's Death*—have posited the hypothesis that Edwin M. Stanton was implicated in or at least had a guilty knowledge of the conspiracy to assassinate Lincoln. It was this theory that the magazine writer expounded in his article "America's Greatest Unsolved Murder".

The Court found the magazine article to contain character-treatments similar to Eisenschiml's and several paraphrases of his work. The magazine writer readily conceded that anyone writing of Lincoln's death would have to be familiar with the plaintiff's works; he admitted the similiarities, to his chagrin, but he maintained that he had not copied.

While ideas are not protected by copyright, the Court declared, mode of expression and the association, arrangement and combination of ideas and thoughts and their form of expression may make a particular literary composition entitled to protection. It expressed sympathy with the plaintiff's contention that his work had been plagiarized, but it concluded that it could not hold that the master's and district court's conclusions to the contrary were clearly erroneous.

The dissenting judge thought the magazine article was a "transparent and shocking piracy" and the master's findings were wrong.

(Eisenschiml v. *Fawcett Publications, Inc.,* United States Court of Appeals, Seventh Circuit, July 17, 1957, Duffy, J.)

Criminal Law . . . *discovery*

The Court of Appeals for the District of Columbia Circuit, probably quieting some fears raised by the Supreme Court's decision last term in *Jencks* v. *U.S.,* 77 S. Ct. 1007, has approved the quashing of a subpoena issued against the Director of the Federal Bureau of Investigation "to bring [into court] the complete files reflecting the criminal records of the witnesses [naming them]".

In the instant case the prosecuting attorney had neither seen nor used any F.B.I. records or reports

Editor's Note: Virtually all the material mentioned in the above digests appears in the publications of the West Publishing Company or in The United States Law Week.

concerning the Government witnesses. The records were apparently desired for purposes of impeachment rather than for testing credibility. The Court pointed out that in *Jencks* the witness had testified to certain facts, which testimony was inconsistent with a report to the F.B.I. of the same facts made by the witness contemporaneously with the occurrences. Thus, the Court concluded, the two cases had nothing in common.

The Court declared that the Supreme Court did not "intimate approval of unlimited examination into F.B.I. files in the hope that something might turn up of benefit to the accused." The *Jencks* case made quite clear, the Court continued, that the prohibition against judicial invasion of executive internal memoranda and reports stood firm.

In any event, the Court said, the proper method for proving criminal records is court documents and entries, not F.B.I. reports. It also noted that only records of convictions, and not records of arrests or so-called "criminal records", may be used for impeachment.

(*Simms* v. *U. S.*, United States Court of Appeals, District of Columbia Circuit, July 8, 1957, Prettyman, J.)

Criminal Law . . . *search and seizure*

The Court of Appeals for the Ninth Circuit has held that the Fourth Amendment's ban against unreasonable searches and seizures applies to the human body, but that the removal by a physician of a quantity of heroin encased in a rubber bag in the defendant's rectum, after he had admitted to officers that it was there, was not unreasonable.

But in so doing, the three-member panel has come up with three opinions. Besides the major opinion, written by Judge Barnes and announcing the judgment of the Court, there was a concurring opinion and a dissenting vote.

After deciding that the standards of the Fourth Amendment apply to the nature and extent of the search of a person made incident to a lawful arrest, Judge Barnes looked at the search in the instant case to determine its reasonableness. The defendant was stopped by officers at the California-Mexico border. Suspected of using narcotics because of marks on his arms, the defendant was asked to disrobe, which he willingly did. There appeared evidence that he had something in his rectum and he then admitted that he was carrying heroin. He co-operated with the first and unsuccessful efforts at removal, but when the removal was effected later by a doctor he had become obstinate. At his trial he made a motion to suppress the heroin as evidence.

Remarking that there is "no slide-rule formula yet devised for ascertaining whether specific conduct is or is not reasonable", the Court turned to *Rochin* v. *California*, 342 U. S. 165, and *Breithaupt* v. *Abram*, 352 U.S. 432, as guides. It likened the case to *Breithaupt*, in which the Supreme Court upheld the reasonableness of an involuntary blood test for intoxication administered while the subject was unconscious.

Judge Barnes emphasized that the defendant was neither mistreated nor abused and he pointed out the impracticalities which would have resulted to the law enforcement officers were they not permitted to make the removal. "There is nothing in the bill of rights which makes body cavities a legally-protected sanctuary for carrying narcotics", he said. "The precise knowledge of what and how much was where, the use of only slight force, the handling of the examination by qualified doctors, with the use of scientific procedures, and under sanitary conditions, all militate against finding this search and seizure to be unreasonable."

The Court rejected application of the Fifth Amendment. Its guarantees against self-incrimination, it ruled, relate only to testimonial compulsion and not to real evidence taken from the person.

The dissenter protested approval of what he termed an "ex parte star chamber invasion of body privacy". He would have permitted nature to take its course.

(*Blackford* v. *U.S.*, United States Court of Appeals, Ninth Circuit, July 10, 1957, Barnes, J.)

Husband and Wife . . . *communications*

The New York Court of Appeals, with two judges dissenting, has refused to construe that state's statutory privilege relating to communications between spouses so as to bar a husband from testifying that his wife told him she had committed adultery.

The New York law provides that "a husband or wife shall not be compelled, or without the consent of the other if living, allowed to disclose a confidential communication made by one to the other during marriage".

The circumstances under which the communication was made and under which it was later admitted in evidence were, of course, all-important. A wife sued her husband, absent for six years, for separate maintenance on the ground of abandonment and non-support. His defense was that he had been forced to leave home because of the wife's cruel treatment of him. To prove his defense of justification because of her cruelty, and not to establish adultery, he was permitted to testify that she had told him that she had had illicit relations with another man several times and that she and her paramour thought they would elope.

The Court held that the essential consideration was the confidentiality of the communication. The statute was designed to protect only those statements "induced by the marital relation and prompted by the affection, confidence and loyalty engendered by such relationship", the Court declared, and could not be used "to label confidential a communication aimed at destroying the marital relationship."

The two dissenting judges said that the statement of the wife fell squarely within the protection of

the statute. It was, they said, an example of the free and full communication between married persons which is not only encouraged but also protected by the law.

(*Poppe* v. *Poppe*, Court of Appeals of New York, July 3, 1957, Fuld, J., 3 N. Y. 2d 312, 144 N.E. 2d 72.)

Juries . . . *jury handbook*

The *Handbook for Jurors*, authorized and published by the Judicial Conference of the United States, has come under fire in the Court of Appeals for the Seventh Circuit. While the Court has reversed a criminal conviction on other grounds, it also has held that a challenge to the venire, based on distribution of the *Handbook* to the jury, should have been granted.

Some specific objections to the material in the *Handbook* were made by the Court. It thought that the distinction made between civil and criminal procedures was too "anemic", in that it was not made clear that a criminal defendant has no obligation to present any proof and may remain silent without any unfavorable inferences being drawn. Also, the Court found that an admonition that the jury should not concern itself with sentence and punishment in arriving at its verdict was a veiled invitation to reach a guilty verdict with the thought that the defendant might receive but a light punishment.

But, most important, the Court declared that distribution of the *Handbook*, which had been authorized in the Northern District of Illinois by rule of the district judges, was an invasion of the purity of the jury and an infringement on the prerogative of the legislative branch charged with the responsibility of providing qualifications for jurors.

The Court rejected the Government's argument that the misinformation in the *Handbook* was immaterial because the jury is bound to follow the instructions. "It strikes us as a strange philosophy", the Court remarked, "that a juror after he has been called for service can be officially indoctrinated with misleading and inaccurate information on the premise that in the end he will by the court's instructions be properly informed."

Because the good purpose and laudable motives of the "able and distinguished members of the federal judiciary who authored the handbook" were not open to question, the Court reached its conclusion reluctantly, but it added: "If its use impinges upon the right of a defendant to a fair and impartial trial as guaranteed by the Constitution and the law, as we think it does, it cannot be judicially sanctioned because of the noble purposes of its sponsors."

(*U.S.* v. *Gordon*, United States Court of Appeals, Seventh Circuit, July 16, 1957, Major, J.)

Libel and Slander . . . *privilege*

The $100,000 libel suit of an Evansville, Indiana, lawyer against the *Evansville Press* has withstood an attack by demurrer in the Appellate Court of Indiana.

The allegedly libelous publication was:

> REEVES SAYS LAWYER'S PLEA FOR SPECIAL JUDGE 'SHYSTERISM'
>
> Circuit Judge Ollie C. Reeves today termed a lawyer's request for a special judge in a case scheduled for trial by jury Monday as 'One of the lowest forms of shysterism.' The rebuke, one of the strongest court attaches could recall, was made against Attorney Charles E. Henderson . . .

The complaint charged that the publication was made with malice, that at the time the circuit judge made the remarks he had no jurisdiction of the case then pending because a change of venue had been taken and that, moreover, the article was not a "fair and true report of any legal proceedings whatsoever".

Because the complaint was attacked by demurrer, the Court declared that the newspaper's privilege to report judicial proceedings, which was the point of the demurrer, had to appear from the complaint itself. And this was the defendant's downfall, because the report was so sketchy that it was not "apparent that the statement of the judicial officer was made at a time and on the occasion of the performance of his particular judicial function in the course of his official duty", the Court said.

The Court had no trouble in finding that it is libelous *per se* to call a lawyer a "shyster" or to characterize any of his courtroom actions as "shysterism".

(*Henderson* v. *Evansville Press, Inc.*, Appellate Court of Indiana, May 28, 1957, Kelly, J., 142 N.E. 2d 920.)

Practice of Law . . . *what is authorized?*

Although agreeing that the preparation of contracts, deeds, releases, mortgages and other documents relating to real estate is the practice of law, the Supreme Court of Colorado has refused to enjoin a Denver real estate brokerage and management firm from continuing its long-established practice of preparing such papers in the regular course of its real estate business, at its customers' request and in transactions which it is handling.

The suit, brought by the unauthorized practice committees of the Colorado and Denver Bar Associations, had sought a wide injunction barring realtors from preparing any papers, including initial contracts or options. The Colorado Association of Real Estate Boards and the Denver Board of Realtors intervened in the action. The trial court had granted the requested injunction, but excluded initial contracts of sale and notes, trust deeds and mortgages evidencing loans which the realty firm intended to retain as its own investments.

The Court made it clear that the basis for its ruling was convenience to the public. It noted, although not as controlling, the fact that in many sections of the state there were few, if any, lawyers, that the practices complained of had been going on for fifty years, that a majority of persons who buy and sell real estate chose real estate brokers rather than lawyers to prepare the necessary doc-

uments, that the record did not show any instance of injury to the public, and that the state legislature had never acted to eliminate the "alleged evil".

Examining decisions in other states, the Court found divergent views, but said: "We feel that the weight of authority and especially the more recent decisions, sanctions our holding that the acts of which complaint is made, done without separate charge therefor by licensed real estate brokers only in connection with their established business, and in behalf of their customers and in connection with a bona fide real estate transaction which they are handling as brokers, should not be enjoined."

Continued the Court:

> We feel that to grant the injunctive relief requested, thereby denying to the public the right to conduct real estate transactions in the manner in which they have been transacted for over half a century, with apparent satisfaction, and requiring all such transactions to be conducted through lawyers, would not be in the public interest; that the advantages, if any, to be derived by such limitation are outweighed by the conveniences now enjoyed by the public in being permitted to choose whether their broker or their lawyer shall do the acts or render the service which plaintiffs seek to enjoin.

In passing, the Court held, for the first time in Colorado, that the judicial branch has inherent and plenary powers to regulate the practice of law and that an injunction at the suit of lawyers, on behalf of the public, will lie to enjoin unauthorized practice.

(*Conway-Bogue Realty Investment Company* v. *Denver Bar Association*, Supreme Court of Colorado, June 10, 1957, Hall, J., 312 P. 2d 998.)

On the same day the Court, in actions brought by the same plaintiffs, approved injunctions against an abstract company and a title insurance company prohibiting them from selling real estate "closing services", but eliminated a provision of the trial court barring the title insurer from preparing papers relating to loans which it knew it was going to sell.

The so-called "closing service", which the defendants called "escrow service", consisted of furnishing space and the preparation of documents necessary to transfers of title and creation of liens. The defendants made separate charges for these services, in addition to their regular charges for abstracting and title insurance. The Court declared that the "closing service" had no connection with and was not incident to the defendants' regular businesses of abstracting and title insurance, that it was practice of law and that it was enjoinable as such whether it was furnished independently or in connection with abstracting or applications for title insurance.

The Court rejected contentions that the defendants, being corporations, necessarily were thereby authorized by their charters to fill in blanks in conveyance and encumbrance forms in the attainment of their corporate purposes as abstracters and title insurers.

(*Title Guaranty Company* v. *Denver Bar Association*, Supreme Court of Colorado, June 10, 1957, Hall, J., 312 P. 2d 1011.)

Public Records . . . *right of privacy*

The right of privacy cannot be the basis for a demand that police officials destroy arrest and identification records of one who was tried but subsequently acquitted of a crime, according to a ruling of the Appellate Court of Illinois for the First District.

The Court recognized and gave full weight to the right-of-privacy doctrine, but it said that the right must be subject to reasonable conditions imposed by the governing authority, one of which is the retention of police records. "The innocent person of today, unfortunately, may be tomorrow's criminal", the Court remarked.

The plaintiffs' action was for a declaratory judgment that they were entitled as a "matter of right, justice and equity to the removal and/or return to them" of the identification records. Distinguishing the case from others where suppression of pictures and records has been sustained, the Court took judicial notice that the records in this case would not be publicly displayed or flaunted and that in any event the record of the trial would remain public. The Court said it was necessary to reach "an equilibrium between conflicting rights, the right of the public to protection and the right of the individual to privacy".

The Court rejected another ground relied on by the plaintiffs. It held that a statute requiring the return to an acquitted person of all records and identifications concerning the accused applied only to the state's department of public safety and not to Chicago's police department.

(*Kolb* v. *O'Connor*, Appellate Court of Illinois, First District, May 21, 1957, rehearing denied June 12, 1957, McCormick, J., 14 Ill. App. 2d 81, 142 N.E. 2d 818.)

Taxation . . . *tax lien priority*

A recognized maritime lien has priority over a federal tax lien against the owner of a ship regardless of whether it arises before or after the tax lien, the Court of Appeals for the First Circuit has ruled.

The maritime lien involved was for stores furnished the ship. The tax lien was for unpaid taxes alleged to be due from the vessel's owner. The Government relied on the tax-lien provisions of I.R.C. §3670 (1939 Code), which provide that the amount of unpaid taxes "shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person".

But the Court did not consider this section specific enough direction to warrant the implication that Congress thereby intended to alter the traditional priority of maritime liens, regardless of point of time, over non-maritime liens relating to a vessel. The section, the Court said, did not profess to modify the familiar rules of general maritime law, and the

Court, refusing to modify them itself, remarked that any change in maritime lien priority must come from the Congress.

The Court pointed out that maritime liens have uniformly been given preference over secured non-maritime claims of other kinds, both prior and subsequent, because the maritime lien attaches to the vessel itself, while other claims are derived through the owner.

(*U.S.* v. *Flood*, United States Court of Appeals, First Circuit, July 17, 1957, Magruder, J.)

Television . . . *educational*

Two taxpayers, joining in a taxpayers' suit financed in part by a commercial broadcasters' association, have been unsuccessful in blocking the University of Illinois from operating a television station.

Judicially noticing that universities have been a prime source of discoveries for the betterment of mankind, the Supreme Court of Illinois has turned down a two-pronged attack on the University's TV operation. One objection was that the state legislature's appropriation for the University did not provide specifically for an expenditure for television, and the other was that, even aside from the question of the validity of the appropriation acts, the University was without legal power or authority to operate an educational TV station.

To answer the latter objection, the Court pointed out that the University was managed by a publicly elected board of trustees which had power to offer learning and studies in wide fields and which had expanded greatly the breadth of the University since its founding. "How can we say", the Court asked, "that the University of Illinois should be restricted to specific authorizations in its proposed research and experimentation such as this?"

On the other point, the Court ruled that the appropriation act, which consisted of appropriations in general categories, was legally sufficient to permit the University to spend money for operation of a television station. The legislature, the Court continued, "cannot be expected to allocate funds to each of the myriad activities of the University and thereby practically substitute itself for the board of trustees in the management thereof".

Although terming the University's argument "persuasive", the Court refused to dismiss the suit because the Illinois Broadcasters Association financed it in part. Despite this, the Court held the plaintiffs were genuine taxpayers and were raising genuine objections.

(*Turkovich* v. *Board of Trustees of the University of Illinois*, Supreme Court of Illinois, May 23, 1957, House, J., 11 Ill. 2d , 143 N.E. 2d 229.)

Torts . . . *immunity*

New York has joined the increasing list of states which have abandoned the rule granting immunity to hospitals from the negligent acts of employees.

"The rule of non-liability is out of tune with the life about us, at variance with modern-day needs and with concepts of justice and fair dealing," the New York Court of Appeals declared in discarding the doctrine.

New York, in fact, did not adhere strictly to the non-liability rule, but had, as have other states, developed a hybrid doctrine under which liability could be attached in many cases. Thus if the injury-producing act were "administrative" there was liability; if "medical" there was no liability. What New York courts have held "administrative" or "medical" has produced a body of case law almost defying analysis.

In overturning the doctrine, the Court pointed out that the American progenitor of the rule, *McDonald* v. *Massachusetts General Hospital*, 120 Mass. 432, decided in 1876, was based on an English case which had itself been reversed. The Court examined the various bases which have been advanced to support the immunity rule—that a tort recovery would invade trust funds, that charity patients waive their causes of action, that a liability rule would discourage private financial support of hospitals, that hospitals do not furnish medical services but only provide space and facilities and that doctors and nurses are not employees but independent contractors—and found them all wanting.

Concluded the Court:

> Hospitals should, in short, shoulder the responsibilities borne by everyone else. There is no reason to continue their exemption from the universal rule of *respondeat superior*. The test should be, for these institutions, whether charitable or profit-making, as it is for every other employer, was the person who committed the negligent injury-producing act one of its employees and, if he was, was he acting within the scope of his employment.

One judge concurred specially. He declared that the same result could have been reached as to liability in the instant case without completely junking the old rule. He would have done this by holding the act complained of "administrative".

(*Bing* v. *Thunig*, New York Court of Appeals, May 16, 1957, Fuld, J., 2 N.Y. 2d 656, 143 N.E. 2d 3, 163 N.Y.S. 2d 3.)

An example of hospital liability is furnished by a recent decision of the Court of Appeals for the Eighth Circuit affirming a $39,380 judgment against a St. Paul private hospital based on the negligence of hospital employees in permitting the plaintiff, a psychiatric patient, to jump from a second-story window and injure herself.

The Court refused to disturb the jury's verdict in the face of evidence from the hospital's own records that the plaintiff was quite disturbed and should be "observed closely". Three doctors had been joined with the hospital as defendants, but the trial court exonerated them by a directed verdict.

The Court ruled that the hospital might be liable for lack of reasonable care regardless of the liability of the attending physicians, and it rejected the hospital's contention that it could not be liable, in the absence of liability on the part of the doctors,

because it was at all times carrying out their directions. The hospital had a duty to perform usual and customary non-medical duties, such as watching mental patients known to be restless, the Court said.

(*Mounds Park Hospital* v. *Von Eye*, United States Court of Appeals, Eighth Circuit, June 28, 1957, Gardner, C.J., 245 F. 2d 756.)

Vendor and Purchaser . . . *fraud and laches*

A Cleveland suburban couple will have a Jehovah's Witnesses hall next-door because, relying on misplaced confidence in a zoning board, they failed to act promptly when they discovered that their property had been purchased through a fraudulent scheme.

A Jehovah's Witnesses congregation, having experienced some difficulty in purchasing a tract for its hall, decided to play it this way: a realtor represented to the land owner and his wife that the site was being purchased by a "splendid young man", who in fact was the president of the congregation, and who, after buying the land, conveyed it to the congregation. The vendors soon discovered the subterfuge, but since they felt that the zoning board would never approve a variance for a church building, they did not repudiate the transaction and even offered to sell additional property. The congregation did, however, obtain a building permit, and then the vendors brought a suit to cancel the deed, restrain construction and compel re-conveyance.

The Court of Appeals of Ohio for Cuyahoga County recognized that a fraud was foisted on the sellers, but denied them any relief because they had waited three and one-half months after learning of the scheme before bringing suit. Thus, the Court said, they waited too long to make their election not to stand by the transaction. "They took their gamble and lost", the Court remarked, "and now seek the aid of a court of equity to perform like an ace in a game of skill to rescue them from the unsuccessful result of their game of chance. Equity cannot lend its aid under such circumstances."

(*Keyerleber* v. *Euclid Congregation of Jehovah's Witnesses*, Court of Appeals of Ohio, Cuyahoga County, May 31, 1957, Kovachy, J., 143 N.E. 2d 313.)

Notice by the Board of Elections

The following jurisdictions will elect a State Delegate for a three-year term beginning at the adjournment of the 1958 Annual Meeting and ending at the adjournment of the 1961 Annual Meeting.

Arkansas	Minnesota
Colorado	Nevada
Delaware	New Hampshire
Georgia	New York
Idaho	Ohio
Indiana	Oregon
Louisiana	Rhode Island
Maryland	Utah
	West Virginia

Nominating petitions for all State Delegates to be elected in 1958 must be filed with the Board of Elections not later than March 28, 1958. Petitions received too late for publication in the March issue of the JOURNAL (deadline for receipt January 31) cannot be published prior to distribution of ballots, which will take place on or about April 4, 1958.

Forms of nominating petitions may be obtained from the Headquarters of the American Bar Association, 1155 East 60th Street, Chicago 37, Illinois. Nominating petitions must be received at the Headquarters of the Association before the close of business at 5:00 P.M., March 28, 1958.

Attention is called to Section 5, Article VI of the Constitution, which provides:

> Not less than one hundred and fifty days before the opening of the annual meeting in each year, twenty-five or more members of the Association in good standing and accredited to a State from which a State Delegate is to be elected in that year, may file with the Board of Elections, constituted as hereinafter provided, a signed petition (which may be in parts), nominating a candidate for the office of State Delegate for and from such state.

Only signatures of members in good standing will be counted. A member who is in default in the payment of dues for six months is not a member in good standing. Each nominating petition must be accompanied by a typewritten list of the names and addresses of the signers in the order in which they appear on the petition.

Special notice is hereby given that no more than twenty-five names of signers to any petition will be published.

Ballots will be mailed to the members in good standing accredited to the states in which elections are to be held within thirty days after the time for filing nominating petitions expires.

BOARD OF ELECTIONS
Walter V. Schaefer, Chairman
Harold L. Reeve
Robert B. Troutman

Tax Notes

■ **Prepared by Committee on Publications, Section of Taxation, Francis W. Sams, Chairman.**

The Finality of the Court of Appeals Decisions in the Tax Court: A Dichotomy of Opinion

by Jack Lee Orkin, Oklahoma City, Oklahoma

Three recent decisions[1] have brought into sharp focus a basic conflict between the Tax Court and the Courts of Appeals with reference to the finality to be accorded decisions of the Courts of Appeals in cases pending before the Tax Court. Where the decision is that of a Court of Appeals which would not have venue to review the determination of the Tax Court in the absence of a stipulation by the parties, there is no great problem. It is where review lies with a Court of Appeals whose prior opinion on the subject the Tax Court refuses to follow that the dichotomy of opinion manifests itself.

The Tax Court by definition is "an independent agency in the Executive Branch of the Government"[2] which has nationwide jurisdiction to redetermine deficiencies in income, gift and estate taxes and to direct the refund of overpayments of such taxes in years in which a deficiency was originally determined.[3] Jurisdiction to review decisions of the Tax Court is not uniform but is vested in the eleven Courts of Appeals, whose judgment is final, subject to review by the Supreme Court upon certiorari.[4] The Court of Appeals to which an appeal may be taken from a decision of the Tax Court is either (1) the Court for the circuit in which is located the office where the tax return in question was filed, or if none was filed, then the Court of Appeals for the District of Columbia, or (2) the Court of Appeals designated by the Commissioner and the taxpayer by written stipulation.[5] The Courts of Appeals are not bound by the Tax Court's view of a case and are free to affirm, modify or reverse a Tax Court decision, with or without remanding for rehearing as justice may require.[6]

Despite the authority of the Courts of Appeals in reviewing Tax Court decisions, the Tax Court in *Arthur L. Lawrence*, 27 T.C. — (No. 82 1957) has recently expressed itself as unwilling to follow their decisions when in conflict with its own, regardless of the fact that the case may be appealed to a court which has previously reversed it. As justification for its position, the Tax Court stated:

> The Tax Court has always believed that Congress intended it to decide all cases uniformly, regardless of where, in its nation-wide jurisdiction, they may arise, and that it could not perform its assigned functions properly were it to decide one case one way and another differently merely because appeals in such cases might go to different Courts of Appeals. Congress, in the case of the Tax Court, "inverted the triangle" so that from a single national jurisdiction, the Tax Court, appeals would spread out among 11 Courts of Appeals, each for a different circuit or portion of the United States. Congress faced the problem in the beginning as to whether the Tax Court jurisdiction and approach was to be local or nation wide and made it nation wide. Congress expected the Tax Court to set precedents for the uniform application of the tax laws, in so far as it would be able to do that. . . .

In addition to legislative history the Tax Court also found support in the difficulty of determining the Court of Appeals to which an appeal may be taken since venue may be stipulated by the parties or may lie in more than one Court of Appeals in consolidated cases involving, for example, scattered corporate stockholders.

This refusal of the Tax Court to follow the decision of a reviewing Court of Appeals on the grounds that it would defeat uniformity of interpretation has not gone unanswered. In *Stacey Manufacturing Co.* v. *Commissioner*, 237 F. 2d 605, 606 (6th Cir. 1956), the Court in a *per curiam* opinion stated that the Tax Court is as bound to follow the court having appellate jurisdiction as are that circuit's district courts and continued:

> The desire of the tax court to establish by its decisions a uniform rule does not empower it to disregard the decisions of its several reviewing courts of appeals. It is for the Supreme Court of the United States—and for that tribunal alone—to review and reverse decisions of the courts of appeals of the United States in their respective jurisdictions. Until the Supreme Court reverses a rule by a court of appeals for its circuit, that rule must be followed by the tax court.

See also *Sullivan* v. *Commissioner*, 241 F. 2d 46 (7th Cir. 1957, *certiorari granted*, June 17, 1957).

One point in this controversy seems abundantly clear. The prospects for its resolution without legislation are practically nil. The Courts of Appeals for the Sixth and Seventh Circuits have expressed their views very strongly. Other Courts of Appeals are probably awaiting an appropriate opportunity to voice the same views. On the other hand, the Tax Court took pains to issue the *Lawrence* case as a court-reviewed opinion without a single dissent and followed the rather unusual procedure of having it written by the Chief Judge. The Tax Court is not likely to budge

1. *Arthur T. Lawrence*, 27 T. C. — (No. 82 1957); *Sullivan* v. *Commissioner*, 241 F. 2d 46 (7th Cir. 1957, *certiorari granted*, June 17, 1957); *Stacey Manufacturing Co.* v. *Commissioner*, 237 F. 2d 605 (6th Cir. 1956).
2. Section 7441. All section references are to the Internal Revenue Code of 1954.
3. Sections 6212-6214, 6512(b), 7442 and 7444-7446.
4. Section 7482(a).
5. Section 7482(b).
6. Section 7482(c)(1).

from its present position for a very long time to come. No Supreme Court pronouncement appears likely in the near future in view of the Court's brief opinion in *Lasky* v. *Commissioner*, — U. S. — (1957). The solution of the problem and the resolution of the controversy, therefore, resolves itself into a policy matter rather than a legal question.

The prime argument in support of the Tax Court's present position is that it results in the uniform application of the Internal Revenue Code to the entire country. Since the Tax Court shares original jurisdiction in tax cases with the various district courts and with the United States Court of Claims, it is open to question as to how much uniformity exists in tax cases at the trial level. It is no trade secret that upon receipt of a deficiency notice, one of the first things counsel considers is the respective state of the law on the case in the Tax Court, the Court of Claims and in the District Court and Court of Appeals having jurisdiction. The knowledge that a Tax Court decision will, in accordance with its uniform opinions, bring one result and that this result will almost certainly be reversed by the reviewing Court of Appeals undermines the effectiveness of any attempt by the Tax Court to achieve under the present system nationwide uniformity in the interpretation of the federal tax laws.

In its opinion in the *Lawrence* case, the Tax Court pointed out several possible situations where, due to its national jurisdiction and the various venues for appeal in cases involving several widely scattered taxpayers, anomalous results could be reached if the Tax Court followed the opinions of the several Courts of Appeals that might be involved instead of its own uniform rule. However, varying consequences might be the lot of these same taxpayers had they followed the route of suing for refunds in their respective district courts in various circuits or in the United States Court of Claims. In short, in seeking uniformity in the interpretation of the federal taxing statutes, the Tax Court appears to have undertaken a task beyond its power to complete and one better left to the Commissioner of Internal Revenue and to the Supreme Court.

The position of the Courts of Appeals as so far expressed by the Courts for the Sixth and Seventh Circuits is a legalistic one. It is based simply on the premise that the Tax Court is an inferior court, a trial court, and must bow to the rule of law announced by the appellate court which most likely will review the case.

The opinions of both the Tax Court and the Courts of Appeals for the Sixth and Seventh Circuits seemingly ignore the practical problem that an unnecessary appeal costs the taxpayer heavily in time and in money for additional interest, bond premiums and attorneys' fees. Whatever jurisprudential arguments may be mustered for either side, the burden on both the taxpayer and the Government in appealing cases which will almost certainly be reversed must not be overlooked. It is submitted that the crux of the problem is the achievement of a fair and final disposition of the case at the trial court level wherever possible, which means the securing of a Tax Court decision which does not literally compel one side or the other to appeal.

One solution often proposed is that a Tax Court of Appeals be established and that it be given exclusive national appellate jurisdiction in tax cases. However, this proposal has met heavy opposition and is unlikely to be adopted.

It is submitted that since the Tax Court is most unlikely to change its own rules of practice for some time to come, legislation must be enacted to compel the Tax Court to follow the decisions of the reviewing Court of Appeals under the following conditions:

1. Where the opinions of the Tax Court applicable to a given case are in conflict with those of the Court of Appeals to which the case ordinarily would be appealable under Section 7482 (b), at least one of the parties must have agreed in writing not to seek an appeal in a different Court of Appeals. Since submission of the appeal to a different Court of Appeals requires the written stipulation of both the Commissioner and the taxpayer, the circuit whose law would govern would be definitely determined.

2. The Tax Court, if it so desires and if such be the case, may state in its report that its own opinions would lead to a different result; that after careful restudy, it believes its own rule to be correct and that of the particular Court of Appeals to be wrong; and that it will continue to adhere to its own rule in circuits wherein the Courts of Appeals had not held to the contrary.

The Chief Judge of the Tax Court presently has discretion to issue cases as memorandum opinions and the issuance of "conflict" cases in such form would further limit their precedent value in subsequent tax cases in any court.

This procedure would avoid the present imposition upon the parties of unnecessary expense and delay in connection with an appeal almost certain to lead to a reversal; it would preserve the nationwide uniformity of the Tax Court's opinions since its own views would be expressed and their continuing applicability to cases outside the particular circuit made clear; it would still afford an opportunity for the Court of Appeals to reconsider its own rule in the light of the Tax Court's opinion in the event there was an appeal; and finally, this procedure would preserve the authority and jurisdiction of the Courts of Appeals in the matter of their review of Tax Court cases and pay such courts the respect due them as the intermediate federal appellate tribunals.

Books for Lawyers

FAMILY CASES IN COURT. *By Maxine Boord Virtue, with a Foreword by Judge Paul W. Alexander. Duke University Press. 1956. $4.00. Pages 290.*

Someday a history of the American Bar Section of Judicial Administration will be written and it should make interesting reading. It was my good fortune to witness the development of what may well prove to be the Section's most significant contribution to the improvement of the administration of justice. I shall not attempt at this time to trace beginnings, but I saw with my own eyes the workings of that famous team, composed of Ira W. Jayne, Presiding Judge of the Circuit Court of Wayne County in Detroit, then Chairman of the Section, and our author Maxine Boord Virtue, to whom I generally refer as "That Little Ball of Fire". He is the inventor of the friend-of-the-court system, which took Michigan by storm, and she is probably the best known and most competent commentator and compiler of judicial statistics in the country.

Together these two embarked upon the venture of Metropolitan Court Surveys, within the framework of one of the Committees of the Section. Well-informed specialists in judicial administration and judges of experience had known for many years that the increase in population and the complexities of modern life, combined with the vagaries of politics, were slowly but surely bringing the administration of justice in the great cities to the point of breakdown. The problems were of first magnitude; mere theorizing was plainly inadequate; the only sensible approach was first to get the facts and then prescribe such remedies as might give hope of success.

Mrs. Virtue's first production was her *Survey of Metropolitan Courts: Detroit Area* (1950). This was followed by her spot-check of the operation of the courts in Chicago and her comprehensive *Basic Structure of Children's Services in Michigan* (1953). She has also organized a survey of metropolitan courts in London. A major project was planned for New York City; but this was superseded by the creation by the legislature of the State of New York of the Temporary Commission on the Courts generally known as the Tweed Commission, which is now seeking to bring some order out of the chaos of autonomous courts, overlapping jurisdictions, and lack of administrative and budgetary control of the courts and the judges in the Empire State.

The uniform experience of those interested in judicial administration has been that the one festering sore, spreading disease everywhere, is the annual processing of the hundreds of thousands of cases affecting family relations. It was as plain as a pikestaff that existing and traditional methods of disposing of huge dockets of divorce cases, child custody, bastardy and adoption proceedings, juvenile delinquency and a miscellany of related minor criminal offenses, were hopelessly inadequate. Many brave souls have attacked this congeries of seemingly insoluble problems with might and main. It was inevitable that the Interprofessional Commission on Marriage and Divorce Laws should turn to Mrs. Virtue to compile the preliminary data indispensable to any proper nation-wide appraisal of existing conditions. This little book is the result. And what a precious volume it is!

As is the case with all her work, the outstanding characteristics are lucidity, objectivity, rare skill in the selection of illustrative material, and restraint. An added feature, perhaps the best of all, is her interpretation of the findings and her comments on significant new techniques and on particular shortcomings.

The study of *Family Cases in Court* covers three cities in some detail: San Francisco, Chicago and Indianapolis. Part Four is devoted to Family Courts in Ohio and Milwaukee, with some comparative data from other courts.

I would recommend that the book first be read through from cover to cover. This will give a view of the whole horizon. Then go back, re-read and study with some care the comments at the end of each Chapter and the whole of Chapter XIII on "Problems and Possible Solutions".

Rather than attempt a detailed description of the various parts of the book, I shall now try a bit of interpretation on my own account. This I think will be more useful to prospective readers.

The general public have a vague idea that broken homes and divorces are a national scandal and that there is probably some close relationship between the widespread juvenile delinquency and the high ratio of divorces; but only those brought in close contact with the disposition of these family matters in court—the judges, the lawyers, the psychologists, the child welfare workers, and the priests and pastors—have any notion of the amount of sheer suffering, desperation and despair that is visited upon the unhappy participants, including husbands and wives, children and a whole periphery of relatives. The physical properties of some of the courts seem sometimes artfully designed to simulate the torture chamber: the crowded courtrooms, the noise and confusion, the hurry and bustle, and, in at least one jurisdiction, two witness chairs, placed close together, and occupied simultaneously by the two spouses, who not infrequently break down during the ordeal. Prolonged cross-

examination all too often serves no other purpose than revenge and senseless punishment. Valuable time of the judges and their supporting staffs is wasted in duplication of effort, circuitous and dilatory fact finding, and unnecessary calendar calls and continuances. The by-products of the traditional adversary procedure are sometimes blackmail and a sordid bargaining which results in unenforceable decrees, bearing no perceptible relation to the well being of the children or the financial means of the husband. Collusion and fraud are rampant. The courts prate about their solicitude for the welfare of the children, but the accepted procedure seems in more than a few instances to place obstacles in the path of the search to find what really is best for the little ones.

Even where there is an integrated court, which should make it possible for a single judge promptly to pass on several related phases of a single family controversy, such as a divorce and a charge of neglect or delinquency, the necessary co-operation or co-ordination is lacking. Generally a system of autonomous courts, with overlapping jurisdictions, splits the dispute into fragments which can never be put together. Here and there rings of divorce specialists have the field to themselves, and the judges have more or less thrown up their hands. The utter futility of making any serious contribution to community welfare under existing conditions and the emotional disturbance which is almost always present, unfortunately cause all but a very few of the judges to detest an assignment to the management of the divorce docket, which they avoid whenever they can.

But there is progress. Conciliation procedures have gained a solid foothold and are developing fast. Here and there we find domestic relations investigators with official status. Often they can be used only on stipulation of the parties. There are other restrictions. But it is encouraging to note that their services are generally welcomed rather than resented by the lawyers and by the judges. Occasionally, special courtrooms and privacy are provided. A few judges have demonstrated rare skill and aptitude for handling family matters. The kindly, gentle approach, which spreads good will like a balm, seems to be infectious.

Perhaps the period of experimentation will lead before too long to the development of some new pattern of procedure which, while preserving the reality of due process, will make full use of the services of investigators, psychologists and doctors, social and welfare workers and others, so that there may in the end emerge a satisfactory modification of the outmoded adversary procedure. I cannot understand why the judge should not be afforded every reasonable facility for arriving at a just and right conclusion as to: who should have the custody of the children and upon what conditions; what amount the husband or father really should, and is able to, pay for support; and whether the marriage is really wrecked or merely for the moment in shallow water. There should be complete integration of the various civil and criminal phases of these matters. And some method similar to the function of the friend-of-the-court system in Michigan should be devised and widely used to compel compliance with and to modify the terms of a decree directing the payment of the sums found proper to be paid for support and for the maintenance and education of the issue of the marriage.

Hovering in the background is a certain natural and perhaps diminishing antagonism between social and welfare workers and others who see only what they conceive to be the best therapeutic solution for the ills of a particular family group and who have little sympathy for rules of law and established procedures, on the one hand, and the judges and lawyers on the other, who insist that there be no binding decision without a fair hearing and that the substantive rights of the parties be respected.

The foreword by Judge Paul W. Alexander, Chairman of the American Bar Association's Special Committee on Divorce and Marriage Laws and Family Courts, whose conspicuous success in the Family Court of Toledo, Ohio, has brought him national fame, is a gem. While he emphasizes the fact that the studies pursued by Mrs. Virtue are directed exclusively to procedure, as providing the most readily attainable and practical solutions to the problems above described, he makes it plain that, if we are to "heal and help troubled families in court", even the most adequate and carefully designed procedures will not suffice, so long as the existing pattern of substantive law in the field of domestic relations remains unchanged. In other words, though not as yet clear and bright, the lines of battle are taking shape. There are those who would entirely abolish the adversary process and supplant it with courts sufficiently staffed with marriage counselors, trained investigators and child welfare workers to survey the existing condition of the marriage and put into effect the best plan for everybody on the basis of human values. This would mean doing away with the theory that the courts may act only when someone is "guilty" of some forbidden act, sweeping into the discard all the existing substantive law of divorce and substituting a nonadversarial inquiry in aid of the marriage. Others would preserve traditional legal procedures but advance to the ideal goal by supplementing and perfecting these procedures.

Yes, this is a fine book. When one sees what one little wisp of a woman can do to improve the administration of justice, one can face the future with hope and with confidence.

HAROLD R. MEDINA

United States Court of Appeals
Second Circuit
New York, New York

OUR YOUNGER LAWYERS

Kirk McAlpin, Secretary and Editor-in-Charge, Savannah, Georgia

In recognition of his outstanding work as Vice Chairman of the Junior Bar Conference, Bert H. Early, of Huntington, West Virginia, was elected Chairman for 1958 at the election held at the New York Annual Meeting.

Kirk McAlpin, of Savannah, present Secretary, was named Vice Chairman.

Bryce Fisher, Council Representative from the Eighth Circuit, is Secretary-Elect.

Incoming Executive Council representatives are Don Evans, of Boston, for the First Circuit; Paul Jaffe, of Philadelphia, for the Third Circuit; W. Reece Smith, of Tampa, for the Fifth Circuit; Ken Burns, of Chicago, for the Seventh Circuit; Calvin H. Udall, of Phoenix, for the Ninth Circuit; James Stoner, of Washington, for the District of Columbia Circuit; Gibson Gayle, Jr., of Houston, for the Fifth and Eighth Circuits at Large; and R. Harvey Chappell, Jr., of Richmond, will continue as representative from the Fourth Circuit for the remainder of the term.

Creation of House of Delegates Approved

The real basis of the Junior Bar Conference's reorganization approved at the New York meeting is the new House of Delegates which will establish the general policy of the Conference. With the general course of action being determined by vote of representatives from each state and local affiliate unit, control of the Conference will be really representative of the will of the younger lawyers of the country.

The reorganization plan was approved at the New York meeting. It will be submitted to the Board of Governors in the fall, and will then go to the House of Delegates of the American Bar Association at its Midyear Meeting in Atlanta. If the plan is accepted, the first session of the House will be held at Los Angeles in 1958.

Strong support is expected from state and local units. Undoubtedly the creation of the House of Delegates will result in the affiliation of an increased number of local units, since each would then be entitled to a delegate and vote.

1957 Awards of Merit

The 1957 Award of Merit Committee, chairmanned by Dick Allen, of Memphis, was faced with an unusually difficult task in selecting winners of the awards. The quality of the entries was very high, reflecting real initiative and energetic work by all of the competing units.

For state units, the coveted Award of Achievement went to the Florida Junior Bar Section, whose president was J. Rex Farrior, Jr., of Tampa. He has now been succeeded by Roy T. Rhodes, of Tallahassee.

The Connecticut Junior Bar Section, whose chairman was (until the recent election of Walter M. Pickett, Jr., of Waterbury) Warren W. Eginton, of Stamford, received the Award of Progress.

Honorable mention was given to the Iowa Junior Bar Section, under Henry G. Slife, of Waterloo. Donal A. Wine, of Davenport, is Iowa's new Chairman.

For local units, the Award of Achievement was won by the Milwaukee Junior Bar Association, whose chairman was Thomas N. Tuttle.

The District of Columbia Junior Bar Section, with James J. Bierbower as Chairman, received the Award of Progress.

The Committee decided that the Philadelphia Junior Bar Association should be given honorable mention for its work this year, guided by Anthony S. Minisi as Chairman.

Gayle Reports on London Meeting

Gibson Gayle, Jr., of Houston, one of the earliest to return from the London meeting, reports that the first session at the Dorchester Hotel, presided over by William C. Farrer, Chairman of the Junior Bar Conference, was participated in by practically all of the British and American members of Junior Bar age. Robert G. Storey, Jr., a past president of the Conference, and Bryce Fisher, Secretary-Elect, spoke briefly on practice in the United States, with responses from young barristers and solicitors from England. A panel discussion on the problems encountered in practice in the two countries gave an enlightening picture of the similarities and differences.

On July 29, the General Council of the Bar of England and Wales gave a reception at Old Hall, Lincoln's Inn, at which Sir Hartley and Lady Shawcross greeted about 125 guests. Mr. Justice Veazey, senior judge of the Chancery Court, spoke briefly about historic Lincoln's Inn, and Chairman Farrer responded, expressing the appreciation of the Conference for the hospitality so generously extended.

Canadian Gives Stimulating Address

One of the really noteworthy addresses at the New York Annual Meeting was that of Charles A. Phelan, of Montreal, Vice President of the Junior Barristers Section of the Canadian Bar Association, given at the Annual Breakfast on July 13.

A delightful and challenging speaker, Mr. Phelan's thought-provoking remarks were interestingly presented. Without deprecating the younger lawyer's deference for existing procedure and the senior

members of the Bar, he urged that the younger members initiate improvements and that they do not hesitate to come forward to urge reforms which they think needed. The fresh viewpoint of the younger lawyer, unhabituated to acceptance of established routine, can evoke suggestions and innovations of real value.

Mr. Phelan feels that the questioning attitude of the young lawyer, refusing to accept the doctrine of *laissez faire,* is not wrong. An idea with real merit should not be suppressed because at first glance it appears daring. Treating with due respect the existing procedures which are the work of his predecessors, a young lawyer with a worthwhile idea should formulate it carefully, and by properly presenting and advancing it, win the support of the older members of the Bar and the benefit of their greater experience in effecting changes.

Information Director meets with committee heads and advisers. (Left to right)—Information Director Gibson Gayle, Jr., of Houston; Charlotte P. Murphy, of Washington, Editor of the Young Lawyer; William M. Saxton, of Detroit, Chairman, Public Information Committee; Richard C. Dibblee, of Salt Lake City, Council Adviser, Unauthorized Practice Committee; and Vernon T. Reece, Jr., of Denver, Chairman, Unauthorized Practice Committee.

Farrior and Harper New Committee Chairmen

James Harper of New York will fill the vacancy created by the resignation of Harold W. Tobin of San Francisco as Chairman of the Legal Institutes Committee.

J. Rex Farrior, Jr. of Tampa, who was in charge of the notable program of the workshop at the New York meeting, is now directing the public information work of the Conference.

Review of Recent Supreme Court Opinions

(Continued from page 937)

B. Sand for the petitioner and by Raymond J. Bradley for the respondent.

Taxation . . . *slot machines*

United States v. *Korpan,* 354 U. S. 271, 1 L. ed. 2d 1337, 77 S. Ct. 1099, 25 U. S. Law Week 4508. (No. 596, decided June 17, 1957.) *On writ of certiorari to the United States Court of Appeals for the Seventh Circuit. Reversed.*

The question here was the proper definition of the words "slot machine" as they are used in 26 U.S.C. (Supp. IV) §4462 (a) which defines gaming devices as "so-called 'slot' machines which operate by means of insertion of a coin . . . and which, by application of the element of chance, may deliver or entitle the person playing . . . the machine to receive cash, premiums, merchandise, or tokens."

Korpan maintained on his premises a number of coin-operated gambling machines which are played by shooting balls into pockets or holes. If the player succeeds in getting balls into certain holes, he receives a varying number of free games and has the option of either playing the games or of cashing them in at a designated rate. Korpan was convicted of willfully failing to pay the $250 tax imposed by the statute over his objections that Congress meant the phrase "so-called 'slot' machines" to apply only to the type otherwise known as "one-armed bandits". The Court of Appeals agreed and reversed the conviction.

The Supreme Court reversed through Mr. Justice BLACK. The Court said that the legislative history and the language of following sections of the statute indicate that Congress had not intended to limit the application of the broad terms of the statute to any particular kind of "slot-machine" gambling device.

Mr. Justice DOUGLAS noted his dissent from "the conclusion that here pin ball machines are games of chance within the meaning of the statute".

The case was argued by John F. Davis for the petitioner and by Robert A. Sprecher for the respondent.

(Continued from page 915)

beautiful green belts. . . .

Tonight through the generosity of the Lord Mayor, who is also well known in our country, we are honored by our brothers of The Law Society in historic Guidhall where, for so many centuries, great ceremonials have been held. Now, all of this would have sufficed far beyond either our needs or our deserts; but as though there are no limits to your consideration for us, you cause us to be greeted by the man who has done more to subordinate brute force to the rule of law than any man of our time, America's greatest friend in war and peace, Sir Winston Churchill. We feel honored, Sir, beyond our power of expression that you, who in the darkest days of history supplied the leadership which made the survival of free institutions on this continent possible, would now toast our profession and recognize it as a force for preserving those institutions. . . .

This is perhaps the largest pilgrimage of lawyers ever made to another land—we would like to believe it is also the most successful. We leave here refreshed and with strengthened bonds of friendship. We are, however, interested in another visit, one that is soon to be made to our country. Our people are looking forward to it with the greatest pleasure. I am sure you know I am speaking of the proposed visit of your gracious Queen and Prince Philip to the United States in October. We are looking forward to that occasion. Then you will witness the depth of our feeling as a nation for your lovely Sovereign and our friendship for the people of England.

Viscount Kilmuir

Mr. President, my Lord Mayor, Sir Winston, Chief Justice, my Lords, Sheriffs, Ladies and Gentlemen, I know that this great company would not only permit but desire me to add my thanks on behalf of us all to the proposer for his tribute to our profession.

The other day I was looking at the life of a predecessor of mine, a Law Officer of England from the Highlands of Scotland, and this sentence came to my eye, "He was noted for his unswerving support of Mr. Pitt." Mr. President, if, after another 150 years, your great-grandchildren find in a small printed footnote in some musty volume these words, "Kilmuir was a most loyal lieutenant of Winston Churchill", then all else about me may accompany me to that limbo of lost lawyers, where I am sure I shall meet a number of good friends.

However, many of you must have thought tonight how fortunate for his potential competitors in the legal profession, both in England and America—for with his ancestry he could have chosen either—that Sir Winston did not embark on a career in the Law. With that ability to get at the essence of a problem, that flexibility of mind, that mastery of language, what an advocate, what a judge, he would have made. How terrifying his cross-examination; *experto crede;* I am experienced and have enjoyed it for twelve years. How lucidly majestic his judgments. Had that occurred in America, the Law Society might tonight be entertaining Chief Justice Churchill of the Supreme Court. Had the honor fallen to the English Bar, my friend, Lord Goddard, might still be wondering if the mantle of the Lord Chief Justice of England would fall on his shoulders, rather than considering whether in a lustrum or two it should pass to another. Yet, with that generosity for which we are famed, we spared him to arms and politics rather than to law. That choice, as you have heard in such generous terms from my friend, the Chief Justice, has proved a blessing to the free and civilized world which found in him a great captain when its need was sorest and which still, as we realize tonight, stands in need of his wise and penetrating counsel.

Tonight, then, after Sir Winston's speech, we have special reason to ponder the position of the lawyer in the western world. I have always thought, Mr. President, that there were three essentials of our common civilization, *sine quibus non:* the first, an ethical system which has transcended all religious differences; the second, the right to think for ourselves; and the third, the existence of an even-handed justice not only between man and man but between man and the state. The legal profession is responsible for the last, and may modestly claim to have made a great contribution to the other two. It is the basic social service on which the comfort and security of ordinary people depend.

Many years ago I remember arguing a case before, *inter alios,* the late Lord Macmillan, who set me back slightly by saying, "You have given me your reasons for saying that this is the law. I am much more interested in the question, 'Why is it the law?' " That, as all my legal friends will appreciate, was a far more difficult question to answer than the question which my other friends have so often received. In our Parliament, it could not be answered as a parliamentary question is answered.

My countrymen all know this story, but I hope it is fresh to some of the others, as to the essence of a parliamentary question. It arose from an experience of a civil servant who lost his way in a motor car. Not knowing where he was he asked a native of these parts who came up to him: he said, "Where am I?" and the friendly countryman replied, "You're in a motor car". The civil servant said, "That is the perfect answer to a parliamentary question: it is short, it is true and it does not add by one iota to the information which you have already."

If then, Mr. President, another of my pragmatical countrymen were to ask me why the lawyer was important in the context of the tenets of the Western World, I should venture to say that it was because he was bred to a double loyalty: first to his client, for whom he must do all;

second, to the standards of his profession and the administration of justice of which each and every one of us is a part to which we must render all. . . .

Mr. President, I hope that the friendships now created will promote more informal visits across the Atlantic in both directions. I know that the legal professions will strengthen the ties and fortify each other by their common outlook, not only towards the law, but towards the common heritage of western civilization, that it is our task to preserve for future generations and, more, to preserve for the world.

Ian D. Yeaman

My Lord Mayor, my Lord Chancellor, Sir Winston, Chief Justice, Mr. President Rhyne, my Lords, Sheriffs, Ladies and Gentlemen,

History has been made no doubt during these last seven days in many ways, but two are specially significant as regards the toast which I have the honor to propose now, that of the American Bar Association, coupled with the name of its President.

On the only previous occasion upon which we have been privileged to receive a visit from American lawyers, they came to look us over professionally and socially without pretence of any working program. After a suitable interval of reflection which has lasted thirty years they have presumably concluded that they can safely discuss the common problems of business with us and we have had some extraordinarily interesting joint meetings over a wide range of professional topics.

Both branches of the legal profession here are delighted to have had this second opportunity of entertaining our friends from America. English barristers are fortunate in having four beautiful halls, in one or the other of which they have been able to entertain all, or nearly all, of the members of the American Bar Association who have visited us. We solicitors, alas, have only one hall and therefore cannot do that in our own home. Had our forefathers foreseen this visit from you, they would no doubt have retained all those Inns of Chancery with their separate halls in which we might have dined you also.

As Sir Leonard Holmes has said so well tonight, fortunately the Lord Mayor of London, himself one of our Council, and the City Corporation have come to our rescue and have very kindly made this ancient hall available to The Law Society to entertain the members of the House of Delegates and their guests, the ladies.

At this hour in the evening, and at this late stage in your visit, I am prepared to admit that we had some anxiety about our ability adequately to repay the hospitality which you Americans traditionally show to your guests in the United States. We heard with great pleasure, tinged perhaps with a little trepidation, of the tremendous reception which you gave to my distinguished predecessor as President of The Law Society, Sir Edwin Herbert, and Lady Herbert, his wife, when they were your guests with the Attorney General last summer. We have tried to produce for you a program which would make you realize in some small measure the genuine pleasure which you have given, not only to your fellow lawyers, but I honestly believe, to the British public as a whole, by your visit to this country. Anyway, tonight I am pretty confident that you will share my view that we have, in the vernacular, "done you proud". We have produced, and are delighted to have been able to produce, for you the greatest man of the age, whom you have heard, Sir Winston Churchill. We welcome him, and we are most grateful to Lady Churchill also for coming here with him.

We have also produced for your delectation the heads of our respective legal professions in the persons of your Chief Justice and our Lord Chancellor, and their ladies. . . .

Your bar association has made huge strides forward in developing its appeal to the practicing attorneys of the United States during the last two years. We wish you still greater successes in the coming years in your efforts to enlist the interest and active support of the whole, or substantially the whole, body of the legal profession in the United States. Every attorney should be a member of it. There is no doubt whatever that, in these days, it is only through a strong and thoroughly representative body that the great profession of the law can play its full part—and an invaluable one it can be—in the affairs of the nation. Long may your Association flourish and may it go from strength to strength.

Now I want to turn for a moment or two tonight to the man whose name I couple with this toast, the new President of the American Bar Association, Mr. Charles S. Rhyne, who yesterday succeeded in office Mr. David Maxwell, who incidentally has made such a wonderful and outstanding contribution as President with Mrs. Maxwell towards the great success of this reunion in England.

Mr. Rhyne's accession to office yesterday has come as a great encouragement to me. I was elected to office twenty-six days ago. Therefore, as compared with him, I am no longer the "new boy", for you, Charlie, can only claim one day's service. There was a circus proprietor who advertised as an attraction to the public, "Come in and see the lion lying down with the lamb." A doubting Thomas paid his money in expectation of being able to get a free show and then demand his money back. He was astonished to find that just exactly what had been advertised took place, the lion did lie down with the lamb. He tackled the proprietor on the matter and asked him how he managed to have a lion and a lamb in a cage together. The proprietor replied that this phenomenon was quite simple. He said, "I do it by frequent and judicious exchange of the lamb."

So it is with us Presidents. We last but a short time and the appeal of a bar association to its members is no doubt enhanced by frequent and judicious changes of President,

except, of course, Sir Hartley in the case of the English Bar Council.

Anyway we are glad to know that the second historical event to which I referred earlier has taken place in England, namely the accession to office of a President of the American Bar Association outside the boundaries of the United States of America. We hope that this is significant of the belief that there is so little between us that you are as much President taking office in London as if you had taken office in New York. May you have, as indeed we expect and know that you will, yet another outstandingly successful year of office, and may the American Bar Association under your able leadership rise to ever greater heights.

Ladies and Gentlemen, I give you the toast of "The American Bar Association", coupled with the name of its President, Charles S. Rhyne.

President Rhyne

Mr. President, my Lord Mayor, my Lord Chancellor, Mr. Chief Justice, our dear and revered friend Sir Winston Churchill, Excellencies, my Lords, Sheriffs, Ladies and Gentlemen:

Britain has given many priceless gifts to the world: parliamentary government, the common law, masterpieces of literature, heroes without number. Surely one of the greatest of all is that great man whose presence here tonight enriches and enlivens this occasion, Sir Winston Churchill, an Englishman to the marrow of his bones, but the cherished property, nevertheless, of all the free world.

Sir Winston and Lady Churchill, we are greatly honored and pleased by your presence here tonight. We in the United States bow to no one, not even your fellow countrymen, in our admiration, respect and affection for you. We claim you, Sir Winston, as one of our very own and wish for you continued good health and happiness and even further achievements in a career which is acclaimed by all as one of the greatest in the history of mankind.

Since our arrival here, one week ago, we have received from all of you nothing but the most wonderful and charming hospitality and kindness. This magnificent banquet tonight is indeed a fitting climax to a week filled with events of great historical significance. We have been received not as guests, not as strangers, but as one of you. It is my high privilege on behalf of the American Bar Association to respond to the kind and inspiring words with which you have honored us tonight, President Yeaman, and to express our thanks for the toast that you have proposed, Sir Winston, as well as for the gracious words in which it was phrased, and to join with our Chief Justice in thanking you for your unexcelled hospitality throughout our visit. You are correct in your statement, President Yeaman, that you have indeed done us proud. You have given us many exquisite and delightful social functions. And the charm, cordiality, warmth and extent of your wonderful entertainment is certainly unsurpassed in all history. We leave you with a deep feeling of appreciation. I know that I speak for all of us when I say that from Westminster Hall to Guildhall your arrangements have indeed been perfection itself.

When our Association was first in your country some thirty-three years ago, the then President of the American Bar Association, Charles Evans Hughes, in thanking you for your hospitality said, that in that visit he and his fellow-American lawyers had, "gone down to the roots of our lives". And we do indeed have our tap root here in this great land and in its traditions, its history, its customs, its literature and its legal institutions and principles. If you will have us, we would like to come back again and again to renew the experience of going down "to the roots of our lives" and to renew acquaintance with a kind, a gracious and a great people. I know we will want to come back as individuals, and I trust that we will not wait another thirty-three years before coming back as an Association.

Guildhall is the symbol of that municipal and national pride so magnificently expressed by Sir Winston in the dark days of 1940 when he said, speaking for all Britons, "We would rather see London laid in ruins and ashes than that it should be tamely and abjectly enslaved". We who have been so fortunate as never to have seen ruins and ashes in our cities, stand in humble admiration of a people and of a city that can rise, as you rose, from such devastation as was visited upon you. We pray to God that neither we nor you nor anyone else on this globe will ever have to face such trials as you of London faced and overcame. However, if it should ever be our lot to be so tried, then we could wish no greater glory for ourselves than to meet and overcome the ordeal with the same spirit and vigor that you of London demonstrated to the whole world. (But the spirit of London is not appropriate to times of catastrophe only; it is a spirit of freedom and it is essential to all the undertakings of free men in peace as well as in war. It is the spirit that must continue to motivate your nation and mine at every level of government if freedom is to endure. We know that you will never fail in that spirit and we know that just to have been here has strengthened that spirit in us.)

On behalf of the American Bar Association, I wish to express our most sincere appreciation to The Law Society, to the General Council of the Bar, and to all of you who have contributed to make our meeting here so successful and so unforgettable in the minds and hearts of all of us. I wish I could name each person to whom we are thus indebted individually, but to do so would require the naming of all the members of the Bench and the legal profession in all England. I must, however, mention two names—Tommy Lund, of The Law Society, on whose broad shoulders has fallen the major part of these arrangements which I have already referred to as perfection itself, and his wonderful staff who served us so well throughout this whole great

conference—and Robin Bolton of the General Council of the Bar and his staff, who made the very wonderful arrangements for Runnymede, the Inns of Court dinners and so many other parts of this program which we appreciate so much.

I have been impressed by the wholehearted friendship for us exhibited wherever we have gone and at every function in our honor. Even if this were to be a final parting—which, of course, it will not be, since we shall surely come again—the past week has given us memories to last a lifetime and to pass on to our children.

Over a long period of years, we have had an intimate and friendly relationship with the members of our profession in your country. This great conference has done much to strengthen the ties between us and it is good that these ties be strong in these critical times. There have been many spontaneous manifestations of friendship and sympathy which we have experienced, the profound sincerity of which no man can doubt who has eyes to see or a heart to understand. And these manifestations have a significance too broad and too deep to be limited by the interest of a profession. The springs of friendship, already great, have been replenished anew and have been multiplied a hundredfold by the personal contacts at this meeting.

This pilgrimage of the American Bar to its ancestral home is an event of substantial and continuing importance, not only in the history of our profession, but also in the history of the entire English-speaking race. As a result of this visit, we will be even closer now and forever more.

Our people report that they have found you people the most friendly and hospitable in all their experience. Their preconceived ideas that the English would be difficult to meet, and be friendly with, proved to be completely in error. Already hundreds of us are on a first name basis with hundreds of English lawyers and their beautiful ladies.

But the major impression is that while Britain has achieved mightily in the past, her achievements of the future will be even greater. Your demonstrated ability to readjust to the great new social, economic, scientific and political developments of the new jet-atomic-international era is therefore the most lasting impression with which we leave you. We leave you also thrilled immeasurably with the certain knowledge that your glorious past is but the prelude to an even more glorious future.

We hope to have many opportunities to return your great hospitality. Each of you must visit the United States to give us that great privilege and pleasure. Do come often and stay a long time.

The privilege of offering a toast to the grand, the gracious and great people, who are our hosts tonight, is one that I will always cherish. In this historic place, on this momentous occasion, before this distinguished gathering, it is indeed a great honor to offer this toast as a representative of all of us who are your guests from beyond the sea. I ask all of you from the United States and the distinguished President of the Canadian Bar Association to rise, please, for the toast I am about to propose. I now propose a toast to our hosts of tonight, The Law Society, and couple with The Society the entire Legal Profession of England. And I invite all of you who are guests to join me in drinking this toast with the greatest of enthusiasm.

Editorials

(Continued from page 916)

aggression even when judged by standards which she herself has prescribed. That circumstance deprives the bully of the excuse for resort to armaments which aggressors often offer in their behalf; that is, that international law has not agreed upon a definition of aggression and that its act is one of defense, not of aggression.

The continuing defiance of the United Nations poses for every man and woman a momentous problem. For members of the legal profession who proclaim devotion to justice under law, the defiance of the United Nations cries out for correction. Only a few years ago the United Nations was viewed as a bright hope, indeed as the greatest hope for peace which enlightenment offered to humanity. It was as if a new star had emerged in the heavens casting an ever-increasing amount of light. Must we now view the United Nations as a receding star which, after its promise of yesterday had encouraged us, must now be abandoned as a forlorn hope? Rather, let us steel ourselves in our faith and let us not believe that the United Nations is destined to become nothing but a debating society or an aggregation of individuals who, having lost sight of their goal, are intent upon becoming do-gooders.

Maybe the world will never agree upon a definition of aggression and maybe all wrongdoers will not be brought to justice, but those circumstances cannot justify right-thinking nations in standing idle with folded arms while a bully invades a liberty-loving nation and shoots down those who seek nothing but self-rule.

The province of the United Nations to preserve the peace of the world by requiring would-be warriors to first come before it must not be dissipated. If we inscribe over the portals of the United Nations building "Justice Under Law" and make it clear that we are prepared to vindicate that principle, the bully will be stopped. "One man with courage is a majority."

Communism or Freedom

(Continued from page 927)

common-law creed is in the course of actual use and practical testing; there is solid ground for the belief that by January, 1958, there will exist a slender volume of summary and illustration of the American concept of the rule of law ready for use by the Commission in other lands.

We American lawyers are the heirs and trustees in the line of direct Anglo-Saxon tradition that goes back at least seven hundred years to a then very small people inhabiting a small island in the Atlantic Ocean. We are partners in the development of that tradition as it has spread from the British Isles over such large areas of the world. Professor C. J. Hamson, a British scholar in comparative law, said at the Athens Congress:

> For it would then appear that a system which bears the marks of being a peculiar historical accident which had occurred in the United Kingdom does in fact embody, and adequately embody, principles and institutions capable of satisfying the aspiration and the needs of justice of free peoples notably different from the original creators of that system.[14]

The immense significance of English law lies not so much in the superficial acreage of its dominion as it does in the intense hold it has upon its many peoples and in its acceptance by Eastern nations of much older civilization which themselves profoundly differ in their culture from the English. To cite Hamson again:

> In these days of fear and doubt and almost of despair, it is an inspiration to reflect upon the history of English law, not indeed in its technicalities but of it as the showing forth of a fixed and constant determination to justice, in a people which is practical and tenacious and capable of much greatness.[15]

To this writer it seems that as inheritors, jointly with so many professional brethren beyond our land and sea borders,[16] of the common law concepts and practice of justice under law, we can without too great difficulty find agreement with them in statements of its elements, its constituent parts. In attempting this task, we have a further incentive by virtue of the fact that English law is, in the broad sense of the term, the subject of sympathetic study in still other countries of the world which have not come within the jurisdiction of the common law.

There are, however, at least two limitations of wise restraint upon the expression of our convictions and enthusiasms and hopes for a still wider acceptance of these convictions and familiarities of our professional life. We should beware of making claim that the institutions of our system have a universal validity. What some or all of us may assume to be necessary and eternal may yet prove to be accidental or transient. Thus the American may tend very generally to think of the "separation of powers" and "free enterprise", or its equivalent terms, as inherent in justice under law. The British nation manages at least as well as we in the wide realm of justice under law without much of either of these institutions which we think are so essential.

The second limitation should be recognition of the confusion that lurks in the concept, however it be phrased, that justice is a notion or principle which is prior to the law, that behind law as an imperfect but always evolving expression of powers, rights and duties stands a *single* immutable and unearthly ideal which can be discovered and intellectually captured. If we can but penetrate the metaphysical veil, we shall then surely by that vision shape the human form of statutes, rulings and judgments to an ideally perfect end.

The danger of great confusion here lies in the impossibility of agreement—to judge by the age-long battle between the many schools of speculative thinking—upon what ideal justice is and hence of agreement upon the very nature of law inherent in any claim to the universal validity of a particular system. Each of us clings to a private view of these abstractions, but there is no unanimity of conviction upon the origins of law and the claims to eternal validity. These latter comments are not offered in derogation of the utility and satisfaction of speculative inquiry. Partial agreement is reached among adherents of a particular school of philosophical thought and such agreement then exerts its influence in the shaping of everyday law. Such agreements, however, are at best partial and transient; the acceptance of the postulates is never universal.

Even if, to make an unrealistic assumption, the leaders of the American Bar would find themselves united in their convictions upon the principles of justice and (to them) the demonstrable universality of our law, and could formulate this agreement, we could be confident that this protrusion would provoke violent challenge from champions of other systems of law within as well as without the Western tradition. It were wise therefore, it is urged, in all efforts to subsume the rules of substance and procedure on which we can find near-unanimity of agreement, to avoid the pitfalls of philosophic bases and of offensive expression of unshakable pride in the superiority of the common law over all others. We may keep our convictions and our pride. Any presentation of the living embodiment of our common law should rely for its persuasive effect upon the impressive history of its almost uninterrupted development and upon its inherent appeal to the reason and aspirations of thoughtful men everywhere. "The recognition that the key to justice is in reason and in the mind is an acquired trait, the result of thought, insight, and training."[17]

---

14. Fellow of Trinity College at Cambridge University, THE ESSENCE OF THE RULE OF LAW, Athens, 1955.

15. *Ibid.*

16. *Cf.* R. Ramaswamy, THE CREATIVE ROLE OF THE SUPREME COURT OF THE UNITED STATES, 1956, with emphasis upon the influence of the Court in the judicial system of India.

17. Erwin N. Griswold, Dean's Report, Harvard Law School, 1955-1956, page 8.

BAR ACTIVITIES

Charles Ralph Johnston • Editor-in-Charge

We are indebted to Eustace Cullinan, of San Francisco, a former member of the Advisory Board, for the following article on the State Bar of California, which he prepared at our request.

Jack A. Hayes
Secretary, State Bar of California

The State Bar of California is a public corporation of the state. Membership is compulsory on all lawyers authorized to practice in the courts of the state. At the last count as of January 1, 1957, there were 18,188 active members to serve a population now estimated at 14½ millions and rapidly increasing by immigration and otherwise. At the same time there were 1482 members on the inactive list, some of whom are retired but many of whom are functioning as officers of corporations but not practicing law. The State Bar was created in 1927 by the legislature after active campaigns by lawyers for and against the integration of the Bar. The State Bar Act is not a part of the State Constitution and is still subject to amendment or repeal by the legislature. Prior to 1927 there was a very successful California state bar association in which membership was voluntary. The association held annual meetings, had committees working and reporting on matters concerning the profession but it had no official authority with respect to discipline, examinations for admission or otherwise. Examinations for admission were held by an examining committee appointed by the Supreme Court of California. Examinations at that time were not difficult or searching. They included in addition to the written part an oral examination of each applicant by one member of the committee. Educational standards, legal and pre-legal, were not exacting. Important improvements followed the creation of the State Bar of California. There are two classes of membership, active and inactive. Payment of dues is compulsory to retain membership or the right to practice. Dues currently for active members are $17.50 per year and for inactive members, $3.00. Those amounts are subject to change by the Board of Governors. As a public corporation, the State Bar controls the collection and spending of its own income, conducts examinations for admission, makes rules and recommendations all subject to approval by the Supreme Court which seldom interferes. As one who served five years as a member of the examining committee, part of the time as chairman, let me say here that contrary to an unjust suspicion sometimes expressed at least in earlier years, the examinations are not designed to favor the graduates of California law schools, and they place no emphasis on law peculiar to California. Indeed as a result of standards established by the State Bar the number of law schools in California has been greatly reduced by elimination of some weaker schools. In drafting the original act, care was taken to make the State Bar so far as possible an agency within the judicial branch. As the act is a creature of the legislature that body has a large measure of authority with respect to requirements for pre-legal education and examinations and while the legislature is ordinarily co-operative with the recommendations of the Board of Governors, the legislative standards of pre-legal education are more indulgent than many of us would like them to be. There are special rules for the admission to the State Bar of attorneys from other jurisdictions. Examinations are required but they are not comprehensive or searching as are the student examinations. The organization of the California Bar is controlled by a board of governors, elected by districts for three-year terms by votes of members practicing within the district. The elections are staggered so that there are a majority of holdover members. The board elects the president of the State Bar annually. By usage, the office of president goes alternately to a governor from the South and from the North. A secretary-treasurer is elected annually but is usually held over indefinitely. He need not be, but usually is a member of the State Bar.

There are many administrative committees appointed by the board. The principal committees are the Committee of Bar Examiners which has a competent young lawyer as its employed secretary, the Committee for co-operation between the law schools and the State Bar, and the local administrative committees

which hear complaints against lawyers in their district and consider other matters of interest to the profession, take evidence, and submit recommendations to the Board of Governors which adopts or modifies as it deems proper. Recommendations for disbarment or other disciplinary measures are then submitted to the Supreme Court for confirmation, modification or the decree the Court deems best to fit the case. Another very important committee is the Committee on Administration of Justice which makes recommendations for or against practices or proposals for new legislation.

The Board of Governors is the authoritative voice of the integrated Bar. It watches proposed legislation, sometimes proposes amendments or new legislation and sometimes opposes bills which seem objectionable. Some years ago they defeated with no difficulty a bill aimed at a special case which would provide that any person who had failed to pass the student examination five times consecutively should be automatically admitted to the Bar, presumably as a reward for perseverance and a tribute to a doting, disappointed father.

The secretary is always an able and seasoned lawyer, who functions as the board's executive officer and manages the activities of the secretarial staff. A good secretary is sometimes appointed to the bench by the governor of the state.

The State Bar has no building of its own because, among other reasons, it would require two or possibly three buildings, one in San Francisco, one in Los Angeles, and perhaps sooner or later another in fast-growing San Diego. At present the State Bar maintains rather extensive offices in rented quarters in Los Angeles and San Francisco where the Board of Governors and the committees hold their meetings as occasions require. The members of the Board of Governors in particular alternate their meetings between the northern and southern headquarters accordingly as the convenience of their business (and sometimes the date and place of important football games) dictates. The members of the board are kept very busy and the presidency is virtually a full-time job while it lasts. The major committees also are kept busy and work hard as a service to the profession.

The whole scheme works quite satisfactorily to the public, the Bar, and the Supreme Court. No member of the board or of any of the committees receives any monetary compensation for his work but necessary travel expenses, strictly limited in amount, are paid out of State Bar funds. There is occasional but not very vehement criticism to the effect that few of the more colorful characters in the profession are elected to the board. The fact is that in the California State Bar, as in the American Bar Association, and most other organizations, the top positions go to members who have worked hard and seriously for the organization and earned their promotion to the spotlight places. Early in the life of the integrated Bar, drives were made to elect to the board representatives of a group who feared hostile or discriminatory action might be taken against them for some of their activities in obtaining business. Among the younger members in the beginning there was distrust of lawyers for banks, trust companies and large corporations and of the foremost members of large law firms. But all that distrust seems to have evaporated for it was never justified by events and partners in some of the largest law firms have been elected to the board and even to the presidency. In most of the districts a practice has grown up by which the local bar associations select a group of members having the respect and confidence of the local Bar, to propose a candidate for the board. As a rule the committee goes seeking the candidate and has not too easy a task of persuading him to allow his name to be proposed with a guarantee of the support which the committee can command. Self-starters, suspected of seeking election for publicity or any selfish purpose are not encouraged. The result is that through the years and in the main the board of governors has consisted of lawyers who are respected and trusted and willing to work hard as a service to their profession and then to return to the ranks, content with the satisfaction of a job well done for the profession.

Barnabas F. SEARS

The Illinois State Bar Association and The Chicago Bar Association are continuing their efforts to obtain judicial reform in the state. At a joint meeting of the governing boards of the two associations on September 7, it was decided to support a court reform amendment to the state constitution which will be put before the voters in November, 1958. The action was taken over objections from some lawyers who felt that the proposed reform did not go far enough.

The associations jointly since 1953 have been working for a court reform amendment which would accomplish two things: (1) an administrative reform which would integrate all trial courts in one court and would vest broad administrative powers in the Supreme Court; (2) provide a non-political method of judicial selection and tenure. The constitutional amendment approved by the legislature in 1957 attempts to accomplish only the first of the reforms and an improved method of selection and tenure is left for later action through legislative or constitutional amendment. Both the Illinois and Chicago associations have approved the action of the legislature while at the same time pointing out that it fails to accomplish the complete objectives of the two associations. The approval has been given primarily on the basis that the

administrative reform is the first step and both associations have pledged themselves to continue their efforts to obtain a non-political selection and tenure system for the judges.

President Barnabas F. Sears, of the Illinois State Bar Association, appointed a committee to study the amendment, S.J.R. 47, consisting of James G. Thomas, of Champaign, Thomas S. Edmonds, of Chicago, and Karl C. Williams, of Rockford, who reported to the Board of Governors. The Chicago Bar Association's committee to report on the amendment consisted of Wayland B. Cedarquist, William M. Trumbull and Cushman B. Bissell.

At the Annual Meeting of the Illinois State Bar Association in Chicago last May, retiring President J. G. Thomas and incoming President Sears, Chairman of the Joint Committee of the Illinois State Bar Association and The Chicago Bar Association, issued a statement that the proposed court reform amendment differed from the provisions of the Bar's proposal in four respects:

1. It does not secure to the people by mandatory referendum the right to vote upon the nonpartisan, nonpolitical method of selecting judges proposed by the Bar.

2. It deprives the Supreme Court of its inherent rule-making power by subordinating that right to future legislative action. It violates the independence of the judicial department as a separate and independent branch of state government.

3. It emasculates the general administrative authority over all courts which the Bar's bill vested in the Supreme Court by providing that the Supreme Court should have no right to assign judges to places where they are needed except upon the request of the lower court judges in the area in question. It therefore prevents the Supreme Court from effectively eliminating court congestion, and makes each Circuit Court a law unto itself. It further permits each Circuit Court to select its own chief judge. It leaves the judicial system without a truly governing head, thus permitting the continuation of present conditions.

4. It continues the antiquated, archaic county as a unit of judicial administration, whereas the Bar bill provided that upon recommendation of the Supreme Court the legislature might create two or more contiguous counties as units for judicial administration, as the realities of the situation required and the future might determine. It, therefore, makes for unnecessary additional courts, additional judicial elections, and additional personnel to man those courts, with the attendant unnecessary expense.

At its annual meeting the Illinois State Bar Association also adopted a resolution favoring the enactment into law of the Jenkins-Keogh Bills and announced that the association had distributed 10,000 petitions to local bar associations throughout the state to be signed by self-employed persons and then to be forwarded to Congress.

Serving with President Sears as officers of the Illinois State Bar Association are Timothy W. Swain, of Peoria, First Vice President; David J. A. Hayes, of Chicago, Second Vice President; Gerald C. Snyder, of Waukegan, Third Vice President; C. Terry Lindner, of Springfield, Treasurer; and Edward B. Love, of Monmouth, Secretary.

The Diamond Jubilee meeting of the State Bar of Texas was held in Fort Worth on July 3, 4, 5 and 6, with an attendance of over 1800 members. The meeting will long be remembered for its well-planned program which reached its climax with an impressive ceremony honoring members who have practiced for fifty or more years. About fifty members were present to accept these certificates.

President Newton Gresham, of Houston, presided and gave a detailed account of the work of the Association during the year, including planning and co-ordinating Diamond Anniversary observance programs in the local bar associations throughout the state.

Virgil T. SEABERRY

Other speakers at this session were Jesús Rodriguez Gomez, of Mexico City, who brought greetings from the Barra Mexicana, of which he is President; Dr. Antonio Martinez-Baez, also of Mexico City, who discussed "The Mexican Constitution of 1857"; Governor Price Daniel; and David F. Maxwell, President of the American Bar Association, whose subject was "The Right of Trial by Jury".

Several hundred attended the legal institute on Texas Family Law, with Edwin Luecke, of Wichita Falls, presiding. Speakers were District Judge Sarah T. Hughes, of Dallas; District Judge Wilmer B. Hunt, of Houston; Dwight Olds, Professor of Law at the University of Houston; and Professors W. O. Huie and George W. Stumberg, of the University of Texas.

Another well-attended institute was on Problems in Securities Transactions, with Edwin E. Weiss, of Austin, presiding. Addresses were delivered by Thomas G. Meeker, of Washington, D. C., General Counsel of the Securities and Exchange Commission; N. J. Kiraly, Columbus, Ohio, Supervisor of Securities for the Department of Commerce; Texas Secretary of State Zollie Steakley; James H. Kerr, Jr., of Houston; and William H. Tinsley, of Dallas.

In addition to the two legal institutes, the program included twelve section meetings, twenty-four breakfasts, fifteen luncheons and numerous committee meetings.

The principal speaker at the Annual Dinner was Herbert Brucker, Editor of the Hartford (Connecti-

cut) *Courant*.

The new officers are President, Virgil T. Seaberry, of Eastland; President-Elect, Leo Brewster, of Fort Worth; and Vice President, Fred Parks, of Houston. The following are new members of the Board of Directors: W. Sears McGee, of Houston; Frank F. Taylor, of Fort Worth; Lyle B. Cherry, of Wichita Falls; Homer E. Dean, Jr., of Alice; David E. Hume, of Eagle Pass; Harold L. Sims, of El Paso; and Ben H. Stone, of Amarillo.

The 31st Annual Meeting of the Idaho State Bar was held at Sun Valley on July 11-13 with President W. E. Sullivan, of Boise, presiding.

Newly elected officers are Gilbert C. St. Clair, of Idaho Falls, President; Clay V. Spear, of Coeur d'Alene, Vice President; and Sherman J. Bellwood, of Rupert, Commissioner for the Western Division. Mr. Spear was also elected State Delegate to the House of Delegates of the American Bar Association.

The Supreme Court Justices and District Court Judges of Idaho held their semi-annual Judicial Conference on July 10 in conjunction with the meeting of the State Bar. The highlight of the Judicial Conference was the report of Ralph R. Breshears, of Boise, Chairman of the Idaho Code Commission, on the proposed new Rules of Civil Procedure for Idaho patterned after the Federal Rules of Civil Procedure. The proposed rules have now been filed with the Supreme Court with the recommendation that they be adopted.

President Sullivan in his report to the State Bar urged the appointment of a committee to study and work out an adequate judicial system for the lower courts of the state. He reported that the Committee on the Increase of Judicial Compensation had been successful in its efforts to increase the salaries of the Supreme Court and District Court judges to $10,500 and $9,500, an increase of $2,000 each.

Four members of the San Francisco Bar addressed the meeting. The speakers and their subjects were J. W. "Jake" Ehrlich, "What's Wrong with the Jury System"; Paul E. Anderson, "Drafting of Partnership Agreements Under the 1954 Internal Revenue Code"; Brent M. Abel, "Drafting of Wills"; and Lou Ashe, "Medicolegal Aspects of Preparing and Trying Neck Injury Cases".

Paul B. Comstock, of Washington, D. C., took office on July 15 as Executive Director of The Florida Bar. His offices will be in the Supreme Court Building in Tallahassee. Announcement of the new Bar officer was made in St. Petersburg by President Baya M. Harrison, Jr.

As Executive Director, Mr. Comstock will perform the duties of administrative head of Florida's integrated Bar, and will be in charge of the Tallahassee office. The Florida Bar was integrated in 1949 as an official arm of the Supreme Court of Florida, and the membership of the group is approximately 7,000 lawyers.

Mr. Comstock replaces Kenneth B. Sherouse, Jr., who has held the post of Executive Director and Editor of *The Florida Bar Journal* since 1953.

Another recent appointment will be of particular interest to readers of the JOURNAL. Richard B. Allen, of Aledo, Illinois, has accepted appointment as Counsel for the Illinois State Bar Association. Mr. Allen will assist the Committees on Grievance, Unauthorized Practice of Law, Public Service, Professional Ethics and Judicial Ethics, in addition to other related duties. His name is familiar to our members as he is Assistant to the Editor-in-Charge of our department, "What's New in the Law".

Kendrick SMITH

The 1957 Annual Meeting of the Montana Bar Association was held at Old Faithful Inn in Yellowstone National Park on June 13-15, with President Weymouth D. Symmes presiding. The meeting was well attended, with some 200 present out of the total membership of 275.

The following officers were elected: President, Kendrick Smith, of Butte; President-Elect, Emmett C. Angland, of Great Falls; and Secretary-Treasurer, John C. Sheehy, of Billings.

The President-Nominee of the American Bar Association, Charles Rhyne, spoke at a general session on the activities of the American Bar Association. W. J. Jameson, former President of the American Bar Association, and now a Federal District Judge, introduced Mr. Rhyne.

John R. McConnell and Wilfred R. Lorry, both of the Philadelphia Bar, conducted a trial panel on the "Preparation and Trial of Civil Actions", and also conducted a panel discussion on "Evaluation of Personal Injury Cases and Settlement Negotiations".

Other topics discussed were "Unauthorized Practice of Law and the Mark Verbon Case" by Robert P. Ryan, of Deer Lodge; and "Adoption of New Rules of Civil Procedure" by several members and visitors.

Five Montana lawyers who have practiced law for more than fifty years were presented with certificates.

The 66th Annual Meeting of the Maine State Bar Association was held at Rockland on August 27-29 with President George D. Varney, of Kittery, presiding.

Elected to serve during the com-

ing year are Herbert E. Locke, of Augusta, President; William S. Silsby, of Ellsworth, First Vice President; John P. Carey, of Bath, Second Vice President; Harold M. Hayes, of Dover-Foxcroft, Third Vice President; and Sanford L. Fogg, of Hallowell, who was re-elected Secretary-Treasurer. George V. Blanchard, of Presque Isle, is a new member of the Executive Committee.

The principal speakers were State Senator Benjamin Butler, of Farmington, who discussed legislative changes; Sidney A. Coven, of Boston, on the subject of "Labor Relations"; and Powers McLean, of Augusta, on "Corporate Organization". Ex-Governor Horace A. Hildreth, of Portland, former United States Ambassador to Pakistan, gave a talk on that country before an Assembly session.

Chief Justice Robert B. Williamson, Maine's youngest Chief Justice, was the guest of honor at the Annual Banquet.

B. E. JONES

The 80th Annual Meeting of the Alabama State Bar was held in Tuscaloosa on July 18, 19 and 20, with President John D. Higgins, of Birmingham, presiding. Over six hundred of the two thousand members of the State Bar registered and attended the meeting.

The new officers are B. E. Jones, of Evergreen, President; Walter Gewin, of Tuscaloosa, First Vice President; and Clopper Almon, of Decatur, Second Vice President. New members of the Board of Commissioners are Dan T. McCall, Jr., of Mobile; F. M. Smith, of Andalusia; and Walter J. Price, of Huntsville.

Special emphasis was placed on the workshops which lasted a full day. The workshop on taxation included a practical discussion of the problems arising in the preparation and filing of an estate tax return in a hypothetical case. The facts and forms were furnished to those attending the session. A workshop on negligence included discussions of "Pre-Trial Conference", "Third-Party Practice" and "Discovery". The criminal law workshop was of particular interest to trial lawyers and included discussions of "Common Trial Mistakes of Defense Counsel from a Prosecutor's Viewpoint", "The Plea of Self-Defense", and "Should the Defendant Testify—a Crucial Decision".

The report of the Committee on Jurisprudence and Law Reform, given by its chairman, J. Edward Thornton, of Mobile, at the final session of the meeting indicated the intense work of this committee in its effort to eliminate many inconsistencies in the laws of Alabama.

Two Midwestern bar associations have won the 1957 Harrison Tweed Award for outstanding service in the field of Legal Aid. The Peoria and Akron Bar Associations were presented with plaques during the sessions of the Conference of Bar Presidents in New York City on July 13. The presentation was made by Orison S. Marden, President of the National Legal Aid Association.

The Peoria Bar Association won the award for its work in setting up the Greater Peoria Legal Aid Society. The Akron Bar Association was honored for its reorganization and expansion of the existing Legal Aid Society in Akron. Harry Sonnemaker, of Peoria, and Kenneth B. Baker, of Akron, received the awards for their associations.

Dallas, Texas, and Sacramento, California, received honorable mention for improving their legal aid services, while Tampa, Florida, and Worcester, Massachusetts, were cited for their work in setting up new facilities.

Both Mr. and Mrs. Harrison Tweed were present at the ceremony.

Your Legal Facts: Information for Your Attorney is the title of a booklet which has been published by the American Bar Foundation in its series of reprints for lawyers. Louis M. Brown, of the Los Angeles Bar is the author. The booklet was written to provide a client with a convenient place in which to record permanently the answers to questions which his attorney will ask him before he gives him legal advice. Orders for the 53-page pamphlet at 75¢ per copy may be sent to:

American Bar Foundation
1155 East 60th Street
Chicago 37, Illinois.

The booklet can be used to develop a technique for the periodic legal check-up idea, sponsored most recently by the Michigan State Bar Association.

Life Insurance Program

(Continued from page 930)

of insurability. All members under 56 are eligible for the $20-a-Year Plan and members between 50 and 70 years may apply for coverage in the 50 Plus Plan.

The large participation in the two group life plans, which have over $80 million of insurance in force, makes the Endowment the administrator of one of the largest professional group life insurance programs in existence.

If you have not already taken advantage of this low cost life insurance, which was developed and designed for the exclusive use of American Bar Association members, *do so immediately.* This most desirable insurance offers additional protection to your family for only a few cents a day.

If you have not received an application in the mail, contact R. S. Breiner, Insurance Manager, American Bar Association Endowment, 1155 East 60th Street, Chicago 37, Illinois.

Activities of Sections

SECTION OF TAXATION

Under the leadership of retiring Chairman David W. Richmond, of Washington, D.C., the annual meeting of the Section of Taxation (which has now reached a membership of over 6700), was held in New York, July 9-13, and in London, on July 25.

After meetings of the officers and Council on July 9 and of the Council and Committee Chairmen on July 10, two days were devoted primarily to committee reports and proposed legislation. The printed annual program contained digests of important new cases, rulings and regulations in the field of taxation.

Twenty-two recommendations for legislation were adopted by the Section and received the approval of the House of Delegates of the Association. These recommendations will be transmitted to the appropriate committees of Congress during the next session.

At a luncheon session on July 12 an address was delivered by Fred C. Scribner, Jr., Assistant Secretary of the Treasury (now Under Secretary), featuring a series of questions and answers with respect to the administration of the Internal Revenue Service.

At one of the business sessions, Howard P. Locke, Clerk of the Tax Court of the United States, outlined certain new procedures being adopted by the Court to expedite the disposition of cases before the court.

There were two simultaneous technical sessions in New York on July 13—a panel discussion conducted by Mark H. Johnson, of New York City, on "Doing Business Abroad" and a series of reports and a panel discussion led by Allen H. Gardner, of Washington, D.C., on state and municipal income taxes.

A third technical session in London on July 25, conducted by Norris Darrell, of New York City, was devoted to a discussion of "Differences Between the Income Tax System in England and in the United States", and featured addresses by F. Heyworth Talbot, Q.C., and Roy Borneman, Q.C., of the English Bar, Erwin N. Griswold, Dean of the Harvard Law School, of Cambridge, Massachusetts, William C. Warren, Dean of the Columbia University School of Law, of New York City, and Thomas N. Tarleau, of New York City.

It is planned that extracts of the various addresses will be published in forthcoming issues of the *Bulletin of the Tax Section.*

The chairman announced the completion of the program of the Section, undertaken at the request of the Commissioner of Internal Revenue, to review and submit suggestions to the Commissioner with respect to regulations under the Internal Revenue Code of 1954, and read a letter from Russell C. Harrington, the present Commissioner, thanking the Section for its help. The Section submitted a resolution to the House of Delegates, which was later adopted by the House, authorizing the Section to co-operate with the appropriate committees of Congress with respect to the "Technical Amendments Act of 1957" (H. R. 8381) in the same manner that the Section co-operated with respect to the Internal Revenue Code of 1954.

The Section elected the following officers for the current year: Lee I. Park, of Washington, D.C., Chairman; William R. Spofford, of Philadelphia, Vice Chairman; and Harry K. Mansfield, of Boston, Massachusetts, Secretary.

The following were elected as Council members for three-year terms: Arthur B. Willis, of Los Angeles, California; Charles D. Post, of Boston, Massachusetts; and Stanley S. Surrey, of Cambridge, Massachusetts. Also elected for a one-year term was Alan Gornick, of Detroit, Michigan.

Raymond B. HOLBROOK

Rappaport Studios

SECTION OF MINERAL AND NATURAL RESOURCES LAW

The meeting of the Council and Committee Chairmen of the Section of Mineral and Natural Resources Law was called to order on Thursday, July 11, at the Barclay Hotel, New York, New York, at 4:00 P.M.

Mr. Holbrook reported that the attendance of the Mineral Law Section at the Denver Regional Meeting on April 10 and 11, 1957, averaged about 200 persons, the largest Section attendance at the meeting. He stated that the program included lawyers, engineers and Government officials, and that the subject-matter was well-rounded in order to achieve maximum attendance.

Chairman Orn and the members of the Council then discussed the role of the Mineral Law Section with relation to the growing number of mineral law institutes. These institutes generally cover subjects of a strictly legal nature. In order to avoid unnecessary duplication, it was felt that the American Bar Association could achieve a more useful function by broader coverage. To that end, the Program Committee, headed by Mr. Kenney of New York, had selected three non-lawyers

to address the Section Meeting on July 12, 1957.

Chairman Orn reported on finances. The principal expense item was the printing of the annual Section report. This publication has achieved the status of a valuable law book. Formerly, it consisted of about twenty to twenty-five pages which were not particularly helpful to a practicing lawyer. Now, it contains perhaps the most comprehensive summary of one year's mineral law.

It was the sense of the Council that the present type of report should be continued, and that the Section dues, the lowest in the Association, should be increased to meet the obligation of printing the annual report. An increase in Section dues would call for action by the Board of Governors. Accordingly, the Council voted to recommend to the Section that it adopt a resolution asking that the dues be increased to $7.00, effective as of July 1, 1958.

Elected to serve as officers of the Section for the coming year were Raymond B. Holbrook, of Salt Lake City, Utah, Chairman; Robert E. Lee Hall, of Washington, D. C., First Vice Chairman; Robert T. Patton, of Los Angeles, California, Second Vice Chairman; and James D. Parriott, of Washington, D. C., Secretary.

SECTION OF MUNICIPAL LAW

A unique feature of the New York meeting of the Section was the scheduling of a joint conference with other co-operating professional groups. The problems in the broad field of municipal law are common to many of those faced by the municipal finance officer and the investment banker. In an effort to seek solutions of these problems, the Section has established liaison committees to work with similar committees of co-operating groups. Arrange-

George F. B. APPEL

ments were made for a joint meeting of all liaison groups in connection with the regular meeting of the Section of Municipal Law.

Accordingly, representatives of the Liaison Committees of the Investment Bankers Association of America, The Municipal Finance Officers Association and the National Institute of Municipal Law Officers and the Municipal Forum of New York met with Liaison Committees and the members of the Section of Municipal Law. The principal topics of discussion were the procedural and contractual matters incident to the issuance and sale of municipal bonds. The related problem of nuisance suits delaying public issues and harassing public finance officers is one of deep concern.

New officers are George F. B. Appel, of Philadelphia, Pennsylvania, Chairman; Charles B. Howard, of Minneapolis, Minnesota, First Vice Chairman; Henry B. Curtis, of New Orleans, Louisiana, Second Vice Chairman; and William F. Tempest, of Chicago, Illinois, Secretary.

SECTION OF CRIMINAL LAW

The New York-London program of the Section of Criminal Law was offered as its most ambitious contribution to the work of the Association in recent years. With trepidation, the Section's Council decided to offer a full-scale presentation of the British system of administering justice, condensed into four half-day working sessions—a high protein fare with little cake. It is deeply gratifying that all sessions were well-attended and that the entire program went off as a resounding success. Of course it was recognized that in London the Section had a unique

Rufus KING

opportunity, in its genial rivalry with some of its bread-and-butter counterparts, to steal the show. Most of the common law's revered traditions of freedom and right are to be seen working in the Old Bailey; parallels in the humdrum of the civil courts are far less close.

Preparations began last fall. The parallel-column analysis of British and American courts, procedures, rights and substantive criminal law, and the accompanying diagrams (published by the West Publishing Company and distributed to Section members and all London registrants) were the work of a team of officers on the Judge Advocate General's staff. Elegant quarters were obtained by courtesy of the London County Council, in its Conference Hall. And great effort was put into selecting and inviting speakers who could present each aspect of the subject with maximum authority. The results speak for themselves.

In New York, the JAG team, headed by Brig. Gen. Charles L. Decker, and Louis B. Nichols, As-

sistant to the Director of the Federal Bureau of Investigation, gave a briefing summary of British criminal procedure and law enforcement. In London, after a welcome by the Attorney General, Sir Reginald Manningham-Buller, Sir Frank Newsam, permanent head of the Home Office, described the role of his agency in keeping "The Queen's Peace"; Sir John Nott-Bower, London Metropolitan Police Commissioner, presented the work of New Scotland Yard; Sir Theobald Mathew, Director of Public Prosecutions discussed his functions and responsibilities; Sir Laurence A. Dunne, Chief Metropolitan Magistrate, depicted the work of judges at the magistrate and police-court level; Judge John Maude, Q. C., now sitting at Old Bailey, spoke on the responsibilities of defense counsel in the courts; and Sir Lawrence A. Byrne, Queen's Bench Division, presented the work of the Royal Courts of Justice.

On sentencing and rehabilitation the speaker was Sir Lionel W. Fox, Chairman of the British Prison Commission; in the special area of treason, treachery and the Official Secrets Act, the Section presented Edward James Patrick Cussen, prosecutor-in-chief of Britain's wartime traitors and collaborators; on the problem of publicity and the role of the press, Percy Hoskins of the *London Daily Express;* and on the handling of juvenile offenders, Lady Cynthia Coleville, long-time lay magistrate (substituting for Sir Basil L. Q. Henriques, with whom she had worked for many years in developing Britain's juvenile courts and court procedures).

Besides these lecture presentations, the program also included tours of inspection at Wormwood Scrubbs, a famous London prison, and New Scotland Yard.

In conclusion, to honor its speakers and to present British guests with a sketch of American criminal justice, the Section gave a formal luncheon at the Park Lane Hotel featuring an address by Attorney General Brownell.

A summary of the foregoing program is to be published and will be supplied to Section members in the near future.

After four years of service as Section chairman, Walter P. Armstrong, Jr., of Memphis, has retired to service on the Council. He is succeeded by Rufus King, of Washington, D. C., whose former role as secretary has been filled by Louis B. Nichols, also of Washington, D. C.

Herbert F. STURDY

SECTION OF CORPORATION, BANKING AND BUSINESS LAW

The Section's July 11 morning session, held in the East Foyer of the Waldorf-Astoria, attracted an overflow crowd of close to 250 to hear a panel of distinguished experts discuss various legal problems involved in the increasingly important subject of ship financing. Several of the more common patterns of ship financing transactions were outlined and the necessary as well as the desirable documentation under each pattern was explained. Such reference points served as connecting links for a discussion which ranged over such topics as construction financing, the various types of charter parties and their role in financing, the preferred mortgage and the status of ship mortgages in the courts of the United States and foreign countries, the availability of government insurance and the impact of investment laws governing financing institutions. Questions and comments from the audience provided additional stimulus.

Many difficult concepts were presented and developed in a clear and concise manner which bespoke both the ability and the preparation of the panel members. The resulting program was instructive to those without prior experience in the field yet illuminating to those with such experience.

The Section's final event for the New York meeting was a visit by more than 350 people to the floor of the New York Stock Exchange. The trading posts were manned by experts who explained the operations and functions of the Exchange. Refreshments were served following the demonstration. G. Keith Funston, President of the Exchange, in a short talk, urged that the American Bar Association develop and encourage a simplification of the laws af-

fecting the sale of securities by executors. He was encouraged to know that some of the top legal talent in the nation was currently wrestling with this problem.

More than 1,000 people crowded the Grand Ballroom of New York City's Waldorf-Astoria on the afternoon of July 11, 1957, to enjoy a provocative and entertaining play entitled "Bar, Bench and Table—An Arbitral Drama". It was the highlight of the Section's activities at the New York portion of the Annual Meeting. The play, written by Alfred B. Carb and Albert I. Edelman, both of New York City, dramatically reflected the role of the lawyer in an arbitration proceeding and aroused interest in and understanding of the arbitration process and its possible application to business situations. Elia Kazan, well-known director of stage and screen, graciously prepared the players for their parts with his expert criticism and guidance.

The plot centered on the failure of a contractor, comically played by Alfred B. Carb, to erect a building for a department store. The merits of the contractor's case were presented to the arbitrators by his attorney, lawyer-actor John Stuart Dudley. The opposition was represented by Harold J. Gallagher, former President of the American Bar Association, in the role of a department store executive and his attorney, depicted by Harrison Tweed, former President of the Association of the Bar of the City of New York. Well-known realtor, William Zeckendorf, appeared as a bungling air-conditioning expert from the firm of Webb and Trapp, who testified on "blowing hot and cold air".

Leffert Holz, Superintendent of Insurance of the State of New York, demonstrated real dramatic talent in his role of janitor, particularly in his soliloquy wherein he questioned whether it is "wiser to litigate and suffer the slings and arrows of vexatious delays—or by arbitration, dodge them?" A highly amusing soft shoe dance by Messrs. Holz and Zeckendorf brought a full round of applause and raised questions as to whether these illustrious gentlemen had missed their true profession.

Joseph N. Welch with great skill and humor took the part of the ghost of Judge Elisha Woofington who had believed that the courtroom was the only proper place for the settlement of legal controversies. At the outset of the play, the amiable ghost, who had returned to earth from the great beyond, was firmly and unalterably opposed to "this new-fangled arbitration," and viewed his arbitrating ex-partner as having "turned into a mewing member of a round table conference instead of a fighting advocate in a court of law". When the arbitration hearing resulted in a decision for the contractor, the opposition appealed to the court, where Judge Harold R. Medina, who played himself, heard the appeal. At this point Mr. Welch, the ghost, who had suffered a change of heart, advised Judge Medina that he had watched the arbitration hearing and was convinced as to the soundness of the result. In the grand finale, Judge Medina, in a serious vein, explained that arbitration does not compete with the judicial function but, rather, supplements it: "There are many fields of controversy where arbitration is the most efficient, the speediest, the most economical and the most plausible means of resolving disputes."

The arbitration board consisted of a banker, an architect (Frank Lloyd of the firm of Wright, Wrong and Lloyd) and a real estate man, played respectively by Judges Thomas F. Murphy and Edward J. Dimock, both of the United States District Court for the Southern District of New York, and Judge Bruce Bromley, former Judge of the Court of Appeals of the State of New York. A pronouncement by this board of "laymen" that they were not judges and didn't know very much law was greeted by enthusiastic laughter.

The humorous narrator of the events in the play was played with finesse and ability by co-author Albert I. Edelman. Joseph S. Murphy, Vice President of the American Arbitration Association, and Churchill Rodgers, Chairman of the Section, played the parts of arbitration clerks with quiet competence.

With wit and humor, the play raised, as painlessly as possible, serious and thought-provoking questions concerning the merits of arbitration. Last year, according to Joseph S. Murphy, there were over 3,300 arbitration cases, ranging from international commercial disputes to common accident claims, of which only 1 per cent ended up on already

jammed court calendars because of dissatisfaction with the arbitrators' ruling.

The play was produced under the auspices of the Section's Committee on Commercial Arbitration, of which Martin J. Dinkelspiel is Chairman, with the co-operation of the American Arbitration Association, whose Chairman of the Board is Sylvan Gotshal. The American Arbitration Association, through its President, Nicholas Kelley, graciously tendered a fine reception after the play so that all in attendance at Section activities during the day could meet the distinguished cast of the play and view the new headquarters of the Association at 477 Madison Avenue.

Immediately preceding the play, the Section held a well-attended luncheon in the Jade Room of the Waldorf-Astoria. The principal speaker, Frederic W. Ecker, President of the Metropolitan Life Insurance Company and Chairman of the Insurance Committee of President Eisenhower's Program for People-to-People Partnership, appealed to his audience of over 300 people to create a "massive network of communication between individual Americans and citizens of other lands and to establish lasting, two-way relations from which international friendship and understanding will grow". He urged those who travel abroad to make special efforts, through personal contact with people in foreign lands, to promote good will for America. He urged those at home to do likewise through the medium of mail. Mr. Ecker stressed that the cementing of such friendships will constitute the paving of "A Road to Enduring Peace". The principal speaker was introduced by his energetic father, Frederick H. Ecker, then in his ninetieth year. The senior Mr. Ecker was President of Metropolitan Life Insurance Company from 1929 to 1936, and Chairman of the Board and Chief Executive Officer until 1948. He remained as Chairman until 1951 and is presently Honorary Chairman and in his seventy-fifth year with the Company.

In attendance at the luncheon were such notables as Mr. Maxwell and Mr. Rhyne, then President and President-elect, respectively, of the American Bar Association; Messrs. Barkdull, Fowler, Gallagher, Gambrell and Holman, all former Presidents of the Association; Arthur Littleton, Chairman of the Association of American Bar Presidents; Judges Harold R. Medina, Edward J. Dimock, Thomas F. Murphy and John Van Voorhis; Surrogates William F. Christiana and S. Samuel Di Falco; former Judge Bruce Bromley; John Stuart Dudley; Leffert Holz, Superintendent of Insurance of the State of New York; Harrison Tweed; Joseph N. Welch; a host of prominent personalities in the American Bar Association; and representatives of many of New York City's leading law firms and corporations.

At a short business meeting of the Section held following the play on July 11, 1957, the following officers of the Section were duly elected: Section Chairman—Herbert F. Sturdy, of Los Angeles; Vice Chairman—George C. Seward, of New York City; Secretary and Editor of *The Business Lawyer*—George D. Gibson, of Richmond, Virginia; Council Members for term ending 1961—Leonard D. Adkins, of New York City, and William T. Gossett, of Dearborn, Michigan; Section Delegate to House of Delegates—Retiring Section Chairman Churchill Rodgers, of New York City.

Donald C. BEELAR

SECTION OF ADMINISTRATIVE LAW

Considerable general interest and a large attendance were generated by the Section's London meeting on July 28. Addresses by Sir Oliver Franks, Chairman of the Parliamentary Committee on Administrative Enquiries and Tribunals (similar to the U. S. "Hoover Commission"), which had just published its report, Sir Cecil Carr, one-time Counsel to the Speaker of the House of Commons, and Ashley Sellers, of Washington, developed the similarity of problems of administrative practice and procedure on both sides of the Atlantic.

Thereafter, Dean E. Blythe Stason, Chairman of the Section's London Meeting Committee, presided over a panel discussion by three English and two American lawyers (Robert M. Benjamin and Whitney R. Harris) of more detailed aspects of administrative law.

About 200 lawyers, almost equally English and American in number, found the program presented jointly by the Section and the Society of Public Teachers of Law of England revealed a further area, Administrative Law, in which the English and the American lawyer have much in the way of "common heritage" and basic approach to legal problems.

The new officers are Donald C. Beelar, of Washington, D. C., Chairman; John B. Gage, of Kansas City, Missouri, Vice Chairman; and Elizabeth C. Smith, of Washington, D. C., Secretary.

Randall J. LEBOEUF

SECTION OF PUBLIC UTILITY LAW

The program of the Public Utility Law Section's London meeting—Hotel Charing Cross, Friday, July 26—was a historical one giving Section members an opportunity to get an insight into the regulatory problems of the principal British public utility industries. The legal advisers and solicitors to the various British gas boards, electricity authorities, railway systems, and road transport commissions were invited to attend the meetings so that Section members from the United States had a special opportunity to meet their British colleagues.

The opening event Thursday evening, July 25, was a cocktail party and reception given by the Gas Council at its headquarters at 1 Grosvenor Place for all Section members and their ladies connected with the United States gas industry. The traditional British welcome was warm and sincere and all of the Section members present had an unusual opportunity to meet and visit with their British counterparts.

At the Friday morning session, July 26, R. A. Finn, Solicitor for the Central Electricity Authority (together with J. S. Mills, Secretary and Solicitor, Eastern Electricity Board) who was designated by Lord Citrine, presented the problems of that nationalized industry. Leslie F. Stemp, Legal Adviser, The Gas Council, the governing council of all the individual area manufacturing gas boards in Great Britain spoke on "The Gas Industry—Before and After Nationalisation". Mr. Stemp was chief legal adviser to the gas industry's trade association before nationalisation and is author of the current section of *Halsbury's Laws of England* covering regulation of the gas industry. M. H. B. Gilmour, Chief Legal Adviser, British Transport Commission, covered "Some Legal Aspects of the Nationalization of the Railways" based on his long experience with that industry. S. D. Herington, of the English Bar, discussed the anomalous position of the partially nationalized, party regulated road transport industry in Great Britain.

Friday noon, the Gas Council, the Central Electricity Authority and the British Transport Commission gave a luncheon for all of the 130 Public Utility Section members and British solicitors attending the meeting. As an unusual "favor", at each seat a three-penny ticket was given to each member to take the train across Charing Cross to Royal Festival Hall to hear the Prime Minister.

Finally, Friday evening, in return for the hospitality of the Section's British hosts, the Section gave an early evening reception, at The Dorchester, to which all of the Section's British colleagues were invited.

The new officers are Randall J. LeBoeuf, Jr., of New York City, Chairman; John B. Prizer, of Philadelphia, Pennsylvania, Vice Chairman; and Francis X. Welch, of Washington, D. C., Secretary.

Views of Our Readers

(Continued from page 881)

law which influenced them to build in a certain community has been changed overnight and that they have absolutely no redress. And that I submit is fraud. "An intentional perversion of the truth for the purpose of inducing another, in reliance upon it, to part with some valuable thing belonging to him"—according to Webster.

Law, as I understand it, always lags behind man's concept of justice. Once hanging was considered a condign punishment for stealing a loaf of bread. The law finally caught up with conscience and taking a loaf of bread was no longer deemed a capital offense. Isn't it time, at long last, that the law caught up with the fraud of "zoning laws" and saw to it that they do, in fact, really *zone* and give the protection they are supposed to provide?

S. M. FERRER
Newark, New Jersey

A Blow to the Military Lawyer

The recent Supreme Court Decision has administered the final blow to the professional prestige of the military lawyer. In their *Covert* case opinion, the highest court in the land has stated in effect that Service judge advocates are nothing better than second-rate hacks puppeting the whims, desires and mandates of their commander. This coupled with congressional refusal to recognize the military lawyer as a professional man is the final straw to convince competent young lawyers that a service career is not very highly regarded. The obvious solution is to let supply officers defend our boys and jet pilots review our million dollar contracts. These categories at least have some standing in the service.

JAY P. COOPER
1st Lt., U.S.A.F.

Classified

RATES 20 *cents per word for each insertion: minimum charge of* $2.00 **payable in advance.** *Copy should reach us by the first day of the month preceding month of issue. Allow two extra words for box number. Address all replies to blind ads in care of* AMERICAN BAR ASSOCIATION JOURNAL, *1155 East 60th Street, Chicago 37, Illinois.*

BOOKS

LAW LIBRARIES OR LESSER COLLECtions of esteemed used law books purchased. Our 64-page printed catalog free on request lists some used law books we have for sale, also indicates the type of materials we will purchase. CLAITOR'S BOOK STORE, Baton Rouge 2, Louisiana.

UNITED STATES GOVERNMENT PUBLIcations at regular Government prices. No deposit—Immediate Service—Write NATIONAL LAW BOOK COMPANY, 1110 13th St., N. W., Washington, D. C.

LAW BOOKS BOUGHT AND SOLD: COMplete libraries and single sets. CLARK BOARDMAN CO., LTD., 11 Park Place, New York City.

"THE HAND OF HAUPTMANN," STORY of Lindbergh Case by Document Expert cited by John Henry Wigmore, 368 pages, 250 Illustrations. Price $5.00. J. V. HARING & J. H. HARING, 15 Park Row, New York 38, N. Y.

FOR A PROMPT CASH OFFER ON LAW books, write The Michie Company, Charlottesville, Virginia.

LAW BOOKS BOUGHT, SOLD, EXchanged. Free Catalogue. IRVING KOTHS, 516½ Main St., Vancouver, Washington.

WHEN YOU HAVE A DOCUMENT PROBlem of any kind send for "Questioned Documents, Second Edition." 736 pages, 340 Illustrations, $12.50 delivered. Also "The Problem of Proof", 539 pages, $10.50 delivered. ALBERT S. OSBORN, 233 Broadway, New York 7, N. Y.

LAW BOOKS BOUGHT AND SOLD: COMplete libraries and single sets. CECIL SKIPWITH, 108 East Fourth Street, Los Angeles 13, California.

WRITE US FOR YOUR TEXT BOOK needs. Good used law books bought, sold and exchanged. (In business 50 years.) THE HARRISON COMPANY, 93 Hunter Street, S. W., Atlanta 2, Georgia.

LOWEST PRICES USED LAW BOOKS complete stocks on hand, sets and texts, Law Libraries appraised and bought. NATIONAL LAW LIBRARY APPRAISAL ASSOCIATION, 538 South Dearborn St., Chicago 5, Illinois.

USED LAW BOOKS AT ATTRACTIVE prices. We buy and sell either one book or a complete library. Let us quote you prices. HARRY B. LAKE, 321 Kearney Street, San Francisco 8, California.

THOMAS LAW BOOK COMPANY PUBLISHers. We Sell, Buy and Exchange. Incorporated 1885. St. Louis 2, Mo.

LAW BOOKS—WE CAN SUPPLY THE FOLlowing sets at this time: U.S. Attorney General opinions, complete sets and odd volumes—Decisions of the Commissioner of Patents, complete sets or odd volumes—U.S. Code Annotated, American Law Reports complete including Digest. ALSO, the following complete Law Reviews: Notre Dame Lawyer, Marquette Law Review, Yale Law Journal, Harvard Law Review. Write us for your every law book need. DENNIS & CO., INC., 251 Main St., Buffalo 3, New York.

NATIONAL REPORTER SYSTEM, ALL buckram complete to date, as a unit or individually; American Jurisprudence and Forms; Federal Reporter, thin paper ed.; U. S. Reports, Lawyers ed.; American Federal Tax Reports; Board of Tax Appeals & Tax Court; A. L. R. and Digests; Williston Contracts, Shepard's U.S. and Federal. Central Book Co., Inc., 261 Broadway, New York 7, N. Y.

FEDERAL CASES, VOLS. 1-30. CIRC. CT. Repts.—Clifords, Blatchfords, etc. 106—335 U. S. Box 70-7.

HANDWRITING EXPERTS

HARRY M. ASHTON, 3601 EDWARDS Road, Cincinnati 8, Ohio. Telephone East 1-6704, or Willow 1-3019. Over 30 years with Post Office Department. Qualified in all courts. Completely equipped laboratory for handling all types of document problems. Member American Academy of Forensic Sciences. Listed in Martindale-Hubbell Law Directory.

RICHARD BOWEN, DETROIT, MICH. 26 years' experience. Photographic and laboratory equipment. 10023 Hubbell Ave. VErmont 7-6454.

DONALD DOUD, CHICAGO & MILWAUKEE. Nationwide experience includes U.S. vs Hiss, Ill. vs Hodges. Complete laboratory facilities. Experienced expert witness. Member: American Society Questioned Document Examiners. 312 E. Wisconsin, Milwaukee; Temple Building, Chicago.

VERNON FAXON, EXAMINER OF QUEStioned documents. Opinions rendered re: Handwriting, typewriting, erasures, interlineations, substitutions on wills, deeds, contracts, books of account, and all kinds of documents. Suite 1408, 134 North LaSalle Street, Chicago 2, Ill. Telephone: CEntral 6-1050.

E. H. FEARON, BESSEMER BUILDING, Pittsburgh 22, Pa. Office telephone: ATlantic 1-2732; residence telephone: TEnnyson 5-7865. Scientific examination of disputed documents. Completely equipped laboratory. Photographic exhibits including third dimension and color made to demonstrate facts in court. Nationwide experience.

BEN GARCIA, EXAMINER OF QUESstioned handwriting, typewriting and inks. Qualified expert, 15 years experience. 810 E. & C. Building, Denver, Colorado. Phone: AComa 2-2360.

LINTON GODOWN, MEMPHIS, EXAMINER handwriting, signatures, typewriting, inks, alterations, etc. Portable laboratory equipment. Reports. Exhibits. Experienced, qualified witness. Member ASQDE. 1830 Exchange Bldg., Jackson 5-1711.

HARRIS & HARRIS, 510 SOUTH SPRING Street, Los Angeles, telephone MAdison 5-1518; and 703 Market Street, San Francisco, telephone DOuglas 2-4329. Discovery and proof of facts relating to disputed handwriting, typewriting, inks and papers. Over 25 years' experience. Qualified in all courts. Members: American Society of Questioned Document Examiners.

LUKE S. MAY, CONSULTING EXPERT & examiner of "Questioned Documents." Qualified all courts United States and Canada. Advanced Scientific Evidence Laboratories for proof of facts, all types disputed papers. Phone Elliott 2445, 843 White-Henry-Stuart Building, Seattle 1, Washington.

M. A. NERNBERG, EXAMINER OF DISputed Documents. Thirty years' experience. Formerly specially employed by the United States Government as handwriting expert in cases involving handwriting. 3219 Grant Building, Pittsburgh, Pa. Phone ATlantic 1-1911.

WM. H. QUAKENBUSH—30 YEARS' EXperience in the disputed document field. Qualified in all courts. Fully equipped laboratory. Listed in Martindale-Hubbell Directory. Phone: VI3-7826, Box 424, Lawrence, Kansas.

KARL SCHOTTLER, 915 CHESTNUT Street, St. Louis 1, Mo., Telephone GArfield 1-3399, Document Examiner and Handwriting Expert; Modern Laboratory; Scientific Technique in Document Examinations.

CHARLES C. SCOTT, KANSAS CITY, MO Author: *Photographic Evidence*. Handwriting and typewriting identified. Forgeries and alterations detected. Faded and obliterated writing deciphered. Nationwide experienced consultant and expert witness. Commerce Trust Building, VIctor 2-8540.

DR. WILMER SOUDER, CONSULTANT. Reports. Exhibits. Testimony. 30 years' experience in State and Federal Courts while a career member Scientific Staff, National Bureau of Standards. 3503 Morrison St., N. W., Washington 15, D. C. Phone: WOodley 6-3050.

GEORGE G. SWETT, DOCUMENT EXPERT with Post Office Department 12 years. Handwriting, typewriting and other document problems considered. Photographic laboratory maintained. Nation-wide qualification. Member: ASQDE. 14 South Central, St. Louis 5, Mo. PArkview 5-9394.

HERBERT J. WALTER, EXAMINER AND photographer of Questioned Documents, 40 years' experience. Charter member ASQDE. George B. Walter, Linton Godown, Associates. Phone: CEntral 6-5186, 100 North LaSalle Street, Chicago 2.

LAWYERS WANTED

YOUNG LAWYER, 27-35, TO FILL OPENING in Legal Department of nationally-known company with headquarters in New York. Desire applicant interested in trade-mark and copyright law. Reply should give details of education, experience and scholastic standing in college and law school. Salary will be based on age, experience and ability. Box 70-2.

MISCELLANEOUS

VALUATION OF CLOSE CORPORATION stock. Thoroughly documented appraisals prepared for gift and estate tax purposes, sales, mergers, recapitalizations, etc. A background of effective cooperation with attorneys, acountants, executors, and financial institutions. For information, call or write MANAGEMENT PLANNING, INC., 192 Nassau Street, Princeton, New Jersey (Princeton 1-4200).

BUSINESS CARDS $3.95 PER 1000. SAMPLE free, write West Shore Ad Service, Box 36, Buffalo, Minnesota.

POSITIONS WANTED

ATTORNEY; 29; MARRIED; COIF, LAW review; 5 years' general practice. Desires position with corporation or firm; will relocate. Box 7AG-4.

ATTORNEY-CPA—35, FIVE YEARS' TAX experience national CPA firm, one year legal department, manager tax section, multi-million dollar industrial firm. Desires association with established law firm. Box 7AG-9.

TAX ATTORNEY DESIRES FULL-TIME position with corporation in South. Box 7S-3.

TAX ATTORNEY, 35. UNIVERSITY OF CHICAGO Law School Graduate. Law Review. Considerable Internal Revenue experience. Desires association with law firm or industry in field of tax law. Box 70-1.

ATTORNEY; N.Y. and D.C.; MARRIED, 30; currently senior law clerk to federal judge; seven years' varied legal experience in N.Y.C. Desires association with established firm or corporation. Relocate or travel. Resume on request. Box 70-3.

ATTORNEY; 32; MARRIED; HARVARD Law School; four years law firm experience: corporate, probate, municipal and federal courts, administrative agencies—desires association East or West coast, firm or corporation. Box 70-4.

LABOR LAWYER, 32, MARRIED. INTENsive experience in all phases of labor relations. Seeking position utilizing experience. Box 70-5.

CERTIFIED COURT REPORTER DESIRES position in District Court, or as law clerk; minimum compensation $6,000.00 annually; married; official experience in state and federal courts; member of American Bar Association. Box 70-6.

SUCCESSFUL TRIAL LAWYER DESIRES connection with reputable firm in New York or Washington, D. C. Box 70-8.

ROBES

JUDICIAL ROBES CUSTOM TAILORED—The best of their kind—satisfaction guaranteed—Catalog J sent on request. BENTLEY & SIMON, INC., 7-9 West 36th St., New York 18, N. Y.

SHORTHAND AND STENOTYPE REPORTING

SAN FRANCISCO: HART & HART (SINCE 1927), official reporters (shorthand and machines); notaries; private deposition suite; statewide notary and reporting service. Chancery Building, 564 Market Street. References: local bench and bar.

TECHNICAL SERVICES AVAILABLE

SCIENTISTS AND ENGINEERS AVAILable for consultation and court testimony. Box 6JL-2.

CONSULTING BIOLOGISTS POLLUTION Effects and Water Quality, fresh and saltwater Investigations, Reports, Court Testimony. Thomas Dolan, Charles B. Wurtz, PhD. 610 Commercial Trust Building, Philadelphia, Pennsylvania.

CLARENCE S. BRUCE, TRAFFIC ACCIDENT Analyst—Reconstruction, Consultation, Expert testimony. Automotive Engineer, formerly with National Bureau of Standards, Washington, D.C. Box 7S-1.

ASSOCIATION CALENDAR

ANNUAL MEETINGS

Los Angeles, California	August 25-29, 1958
Washington, D. C.	August 24-28, 1959

REGIONAL MEETINGS

Louisville, Kentucky	November 7-9, 1957
Atlanta, Georgia	February 19, 1958
St. Louis, Missouri	April or May, 1958
Pittsburgh, Pennsylvania	March, 1959
Memphis, Tennessee	November, 1959

BOARD OF GOVERNORS

Chicago, Illinois	October 18-19, 1957
Atlanta, Georgia	Preceding House of Delegates Meeting (exact date not fixed)
Washington, D. C.	May 19-20, 1958

CONFERENCE OF SECTION CHAIRMEN

Chicago, Illinois	October 20, 1957

HOUSE OF DELEGATES—MIDYEAR MEETING

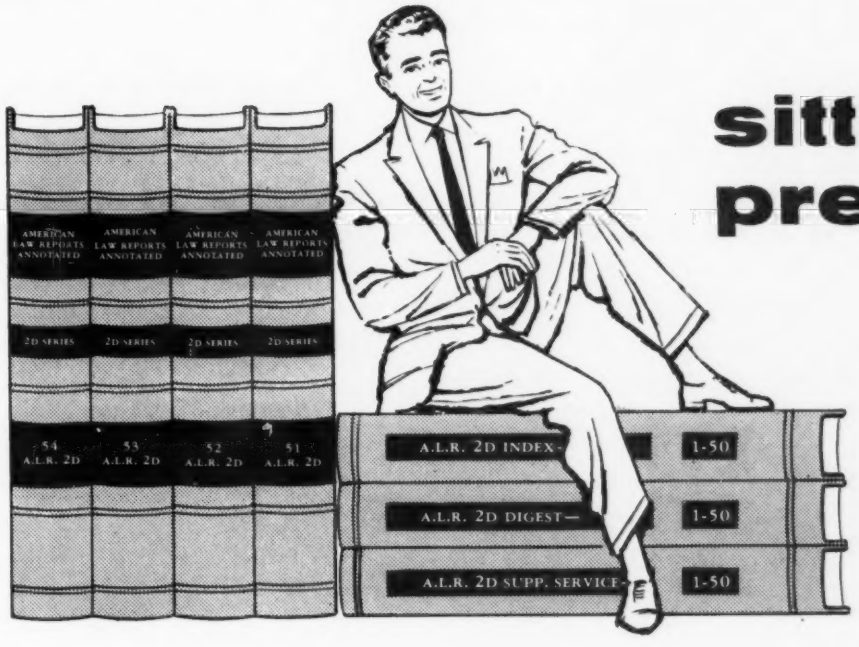
Atlanta, Georgia	February 24-25, 1958

STATE DELEGATES MEETING

Atlanta, Georgia	February 25, 1958

FELLOWS OF AMERICAN BAR FOUNDATION

In connection with Midyear Meeting in Atlanta



sitting pretty!

with the new A L R 2d 50 series

EXHAUSTIVE OF YOUR STATE CASES
FOR EVERY POINT ANNOTATED

1957 launches the magnificent FIFTY SERIES of American Law Reports 2d. *Now* is the ideal time for you to start *your* subscription.

Get in on the ground-floor plan's low terms and low cost. Write *today* to either publisher for complete details. No obligation, of course.

THE LAWYERS COOPERATIVE PUBLISHING CO., Rochester 14, New York
BANCROFT-WHITNEY COMPANY, San Francisco 1, California